

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
TYLER TEXAS

STRAGENT, LLC, ET AL		DOCKET 6:11CV421
		MARCH 10, 2014
VS.		8:52 A.M.
INTEL CORPORATION		TYLER, TEXAS

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VOLUME 1 OF \_\_, PAGES 1 THROUGH 366

REPORTER'S TRANSCRIPT OF JURY TRIAL

BEFORE THE HONORABLE TIMOTHY B. DYK  
UNITED STATES FEDERAL CIRCUIT JUDGE

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1 (REPORTER'S NOTES VOLUME 1, 8:52 A.M., MONDAY,  
2 MARCH 10, 2014, TYLER, TEXAS, HON. TIMOTHY B. DYK  
3 PRESIDING.)

4 (Open court, all parties present, prospective  
5 jurors not present.)

6 THE COURT: We have a few matters I'd like to  
7 take care of before we bring in the jury panel. First of  
8 all, I notice there was an *in limine* motion filed last  
9 night, yesterday, with respect to the invalidity  
10 contentions. Is that something that can wait to be  
11 resolved until we conclude court today?

12 MR. ALBRITTON: Your Honor, Eric Albritton on  
13 behalf of the plaintiff.

14 Generally that is fine, yes, your Honor. The  
15 only issue is it relates to the instructions that I  
16 believe the jury is going to give the court this morning,  
17 the preliminary instructions. So, the court might want  
18 to resolve it before that because there is a direct  
19 relationship.

20 THE COURT: How does it affect the preliminary  
21 instructions? I'm generally familiar with what the  
22 motion is though I haven't read it yet.

23 MR. ALBRITTON: Yes, sir. The preliminary  
24 instructions lay out in detail the art that Intel  
25 contends renders the patents -- or the patent claims

1 obvious --

2 THE COURT: No. No. The final instructions  
3 do that, but the preliminary instructions don't.

4 MR. ALBRITTON: I apologize, your Honor. I've  
5 got the two confused. Then no, we don't need to resolve  
6 it this morning.

7 THE COURT: Okay.

8 MR. CAMPBELL: No disagreement here, your  
9 Honor.

10 THE COURT: Okay. Now, there's also the  
11 motion for clarification. Is that something that can  
12 wait until the end of the day as well?

13 MR. ALBRITTON: Yes, sir.

14 MR. CAMPBELL: Yes, sir.

15 THE COURT: Okay. And who is going to be  
16 doing the jury selection? Mr. Albritton and  
17 Mr. Campbell?

18 MR. JONES: Mr. Jones, Mike Jones, your Honor,  
19 for Intel.

20 THE COURT: Okay. And who is going to be  
21 doing the opening statements?

22 MR. ALBRITTON: I will, your Honor, on behalf  
23 of the plaintiffs.

24 MR. CAMPBELL: I'll be doing the opening for  
25 Intel.

1 THE COURT: And Mr. Campbell. Okay.

2 Now, I've been working on the final jury  
3 instructions; and I'm hoping to have a preliminary draft  
4 of that available for you by the end of the day today.  
5 And what I'd like to do is to have an informal conference  
6 about the final jury instructions at the conclusion of  
7 court on Tuesday in which we'll try to resolve as many  
8 issues as possible. That won't be the time for making  
9 the formal objections. That will be at the charge  
10 conference. But it would be helpful to me if you could  
11 take the draft final instructions and do what you did  
12 with the preliminary instructions so that I can see what  
13 the areas of disagreement are and what suggestions you  
14 have so that when we get together on Tuesday after court,  
15 we can go through that. Any questions about that?

16 MR. ALBRITTON: No, your Honor.

17 THE COURT: Okay. Now, there is one issue  
18 that came up in looking at your proposed final jury  
19 instructions and the preliminary instructions; and that  
20 is, in the preliminary instructions there is a statement  
21 that Stragent is not seeking damages for claim 1 of the  
22 '244 patent. And I noticed in the final jury  
23 instructions you seem to disagree about that. There was  
24 no objection to that sentence in the preliminary  
25 instructions. Where do we stand on that?

1 MR. ALBRITTON: Where we stand on that, your  
2 Honor, Dr. Vellturo is not going to opine specifically  
3 about damages related solely to the claim 1 of the  
4 '244 patent. However, as the trial develops, there may  
5 be some testimony that comes in, for instance, on  
6 cross-examination of Ms. Woodford that would form a basis  
7 for a damage claim with respect to the '244. So, I think  
8 we -- if it pleases the court, we could defer that issue  
9 until the evidence comes in because I think that will  
10 resolve it one way or the other.

11 THE COURT: Okay. Well, Mr. Campbell, is  
12 that --

13 MR. CAMPBELL: Your Honor, there is a motion  
14 *in limine* on this issue; and we don't have an objection  
15 to the preliminary instruction as it is framed. If  
16 Mr. Albritton plans to elicit testimony about this topic,  
17 I believe it would require approaching the court first to  
18 resolve it.

19 THE COURT: Well, I understand that; and I  
20 assume that's what he proposes to do. But for the moment  
21 I have to give the preliminary instructions right now.  
22 There is a sentence in there that says that they are not  
23 seeking damages for claim 1, and I think the suggestion  
24 is to delete that sentence from the preliminary  
25 instructions and simply continue to mention that they are

1 seeking damages for the other two claims but don't say  
2 that they are not seeking damages for claim 1.

3 MR. CAMPBELL: I understand, your Honor.

4 THE COURT: Is that acceptable?

5 MR. CAMPBELL: It is acceptable.

6 THE COURT: Okay.

7 MR. ALBRITTON: Thank you very much, your  
8 Honor.

9 THE COURT: Okay. Is there anything else that  
10 either of you has that we ought to discuss before we  
11 bring the jury panel in?

12 MR. ALBRITTON: No, sir, your Honor.

13 MR. CAMPBELL: No, your Honor.

14 THE COURT: Okay. Now, just one caution. In  
15 doing the jury questioning for your 20 minutes each, I do  
16 want you to be careful not to argue the case through the  
17 questions that you ask to the jury panel. I feel  
18 strongly about that so -- I don't want to have to stop  
19 you from questioning, but just be careful not to use that  
20 as the opportunity for arguing your case.

21 For example, I'd prefer you not ask has  
22 anybody ever stolen anything from you and how would you  
23 feel if something had been stolen from you. That sort of  
24 thing, seems to me, tends to go over the line in terms of  
25 arguing the case as opposed to selecting the jury. Any

1 questions about that?

2 MR. ALBRITTON: Not on behalf of the  
3 plaintiff, your Honor.

4 MR. JONES: No, your Honor.

5 THE COURT: Okay. All right. Then we'll  
6 recess for a moment and we'll bring the jury panel in and  
7 then we'll begin. Okay?

8 (Recess, 8:59 a.m. to 9:16 a.m.)

9 (Prospective Jurors present.)

10 THE COURT: Good morning. Ladies and  
11 gentlemen of the jury panel, you've already been welcomed  
12 to the United States District Court for the Eastern  
13 District of Texas; but let me extend a warm welcome on  
14 behalf of myself. My name is Timothy Dyk. I'll be the  
15 judge in this case. I don't normally hear cases in  
16 Texas. I sit in a Court of Appeals in Washington but  
17 Chief Judge Davis asked me to come here and help out and  
18 I was happy to do so and I look forward to our time  
19 together.

20 Now, let me just introduce some people in the  
21 courtroom. My law clerk Sanjeev Laud is sitting there to  
22 my left. He'll be assisting me, as well as the court  
23 staff. And we have here Rosa Ferguson who is the  
24 courtroom deputy. The court reporters are Tonya Jackson  
25 and Chris Bickham. And our court security officer is Tom

1 Blanton.

2 Before we start, I want to emphasize how much  
3 we appreciate your jury service and how important jury  
4 service is. Service on an American jury is really one of  
5 the highest privileges and responsibilities in our  
6 democracy; and it's so important that while federal  
7 judges such as myself are excused from jury service in  
8 our own court, we're often called to jury service  
9 ourselves in state court. I'm called every two years,  
10 and I sit where you are sitting.

11 And your role is not only important, it's  
12 central and critical to the importance of the justice  
13 system and I thank you for being here and for your  
14 service and look forward to your participation.

15 Now, our first order of business today will be  
16 to select a panel of jurors for this case; and ultimately  
17 there will be eight jurors selected. And, of course,  
18 there are many more of you here than the eight who will  
19 be finally selected. That happens in every case. The  
20 process for selection of the final jury involves my  
21 asking you questions. Then I'll give the lawyers an  
22 opportunity to ask questions. And once the eight jurors  
23 have been selected, those of you who are not selected,  
24 with our thanks, may leave.

25 The process after the jury is selected is as

1 follows: The party who brought this case, the plaintiff,  
2 which is Stragent, LLC, will present opening statement;  
3 then the defendant, which is Intel Corporation, will  
4 present an opening statement. Both sides will present  
5 witnesses. After the witnesses have been presented, I  
6 will give final instructions to the jury; and then the  
7 jury who is selected will deliberate.

8 The trial will be approximately 9:00 in the  
9 morning until 5:30 each day, though there may be some  
10 days that I will ask you to start earlier or to go a bit  
11 later to keep up. We are planning to finish this week,  
12 but it is possible that we would go over until Saturday  
13 morning or even into next week.

14 Now, I'm going to ask you a few questions; and  
15 as I mentioned, the lawyers will ask you questions for a  
16 while. The lawyers, in asking the jurors questions, may  
17 ask general questions; or there may be a specific  
18 question directed to an individual juror. And that's all  
19 part of the process that the lawyers are allowed to play  
20 in selecting a jury. The purpose of all of this is to  
21 select what the lawyers think is a fair and impartial  
22 jury.

23 Now, let me add one other point; and that is  
24 it's not my purpose in questioning you or the lawyers'  
25 purpose in questioning you to pry into your personal

1 affairs. It doesn't happen often but if a question comes  
2 up that you don't want to respond to in public, all you  
3 have to do is say, "I'd like to talk to you in private,  
4 Judge Dyk" and you can come up to the bench and we can  
5 have a private discussion about anything that bothers  
6 you. And this is not a process that is intended in any  
7 way to invade your privacy, but there are questions that  
8 need to be asked to secure a jury.

9 Now let me add one final point. And that is  
10 whether you're selected or not, it doesn't in any way  
11 reflect on you if you are not selected. It's just part  
12 of the process. It doesn't mean that anybody thinks you  
13 can't be fair. It doesn't mean that someone doesn't like  
14 you. It's just part of the process in which jurors are  
15 selected every day in courtrooms around the country.

16 Now, we're going to begin with a list of  
17 questions which will appear on your screens; and my law  
18 clerk will put them up there.

19 All right. So, I'm going to ask you to go by  
20 your juror number and to answer the questions. I'm not  
21 sure how we're going to deal with the jurors who are  
22 sitting in the audience. We'll have to find some way for  
23 you -- I guess there is a screen over to your left that  
24 you can look at when you're responding to the questions.

25 So, why don't we begin with Juror Number 1.

1 If you would just respond to each of these questions,  
2 that would be helpful; and then we'll go on to Juror  
3 Number 2. And there is a microphone for you.

4 PROSPECTIVE JUROR: Hi. My name is Andrea  
5 Jones, and I'm Juror Number 1. My spouse's name is  
6 Zachary Jones. And I am a teacher at a day care. I  
7 have -- my spouse is a salary manager at Walmart. And I  
8 have two children. In my free time I like to just be  
9 outdoors with my family.

10 THE COURT: Okay. Thank you.

11 PROSPECTIVE JUROR: I'm Juror Number 2. My  
12 name is Joe Leach. My spouse's name is Mona Leach. I am  
13 a salary manager with the Home Depot. My wife is also  
14 a -- works for Home Depot. We have five children. Two  
15 of them are adults, and one of them is -- his occupation  
16 is college, and the other one is a mother. And my spare  
17 time -- with five kids, that's my spare time.

18 THE COURT: Thank you.

19 PROSPECTIVE JUROR: Good morning. Bryan  
20 Branch, Juror Number 3. My wife's name is Ladonna  
21 Branch, and I am a self-employed land developer. My wife  
22 is a hairstylist. I have two children, 6 and 4; and in  
23 my spare time I like to take them to their favorite park  
24 and climb any hill or mountain I can find and do anything  
25 outdoors.

1 THE COURT: Thank you.

2 PROSPECTIVE JUROR: My name is Richard  
3 McDaniel. I'm Juror Number 4. My occupation is  
4 self-employed parking lot striping. My spouse is a  
5 teacher. I have one child, and we like to spend time  
6 with our child and travel in our free time.

7 PROSPECTIVE JUROR: My name is Annie Spencer.  
8 I'm a divorcee. I retired from Carrier's  
9 air-conditioning. I have two children. They're both  
10 adults. And I like to fish.

11 THE COURT: Thank you.

12 PROSPECTIVE JUROR: Good morning. Matthew  
13 Leach. I'm a hydraulic mechanic. My spouse's name is  
14 Allison Leach. She's an insurance agent. We have one  
15 child who is 5. And in our spare time I play softball,  
16 and I teach my son T-ball.

17 THE COURT: Thank you.

18 PROSPECTIVE JUROR: My name is Vesta Talbert.  
19 I'm Juror Number 7. My spouse's name is Travis Talbert.  
20 I am an ophthalmic technician for an eye doctor. My  
21 husband is a water well service supervisor. I have three  
22 children. The oldest one works at Walmart distribution,  
23 the middle one works with my husband, and the youngest  
24 one works at Walmart. And in our spare time we like to  
25 have cookouts.

1 THE COURT: Thank you.

2 PROSPECTIVE JUROR: I'm Bill Priddy, Juror  
3 Number 8. My wife's name is Theresa. We have two adult  
4 children. One is a homemaker, and the other is a  
5 schoolteacher. And in my spare time I like to spend time  
6 outdoors.

7 THE COURT: Thank you.

8 PROSPECTIVE JUROR: My name is Michael Roark.  
9 I'm Juror Number 9. I'm not married. I've worked for  
10 Smith County as an assistant veteran service officer.  
11 And my spare time I spend mostly outdoors.

12 THE COURT: Thank you.

13 PROSPECTIVE JUROR: Steven Gibbs, Number 10.  
14 Regina Gibbs. I'm an oil field truck driver. She is a  
15 veterinary practice manager. We have two children, a boy  
16 and a girl. I have a stepdaughter who is 19, works at  
17 Burger King. And free time, I like to spend with family  
18 and sleep.

19 THE COURT: Thank you.

20 PROSPECTIVE JUROR: I'm Marilyn Johnston,  
21 Juror Number 11; and my spouse's name is Joe Ed Johnston.  
22 I'm semi-retired, interior designer; and my husband's  
23 occupation is a Northwestern Mutual financial planner. I  
24 have two children. One is a Northwestern Mutual planner  
25 in Houston, Texas. The other one is in the ministry at

1 College Station, Texas, and is a fellowship athletics  
2 director and -- Christian director. And my free time, I  
3 have five wonderful grandchildren; and I love  
4 baby-sitting.

5 THE COURT: Thank you.

6 PROSPECTIVE JUROR: Good morning. My name is  
7 Charles Leffall. I'm Juror Number 12. My wife's name is  
8 Gloria Leffall. I'm kind of up here. I can't --  
9 sometimes it's good to be tall, and sometimes it's not.  
10 My wife is a salaried supervisor with Neiman Marcus. I  
11 do have -- well, I'm actually retired, a retired  
12 educator; and I do have two adult children. One is an  
13 attorney in Bryan/College Station. The other one is a  
14 registered nurse in Houston. And I love messing with the  
15 cows on my farm.

16 THE COURT: Thank you.

17 PROSPECTIVE JUROR: Good morning. My name is  
18 Jerry Rogers. My wife he is Hollie Rogers. She is a  
19 teacher at a day care. I have two children. One is 6  
20 and one is 11 and they're both in school. And my free  
21 time I just spend out in the farm playing around, like he  
22 said, with the animals.

23 THE COURT: Thank you.

24 PROSPECTIVE JUROR: Good morning. My name is  
25 Carolyn Morris. My husband's name is James Morris. I'm

1 a retired licensed vocational nurse. My husband is  
2 retired from Terry County Sheriff's Department as the  
3 deputy sheriff and a private investigator. I have three  
4 grown children. My daughter is an LVN, and both of my  
5 sons are in construction. And free time, I like to do  
6 needlework.

7 THE COURT: Thank you.

8 PROSPECTIVE JUROR: My name is Randee  
9 Cheatham, Juror Number 15. My husband's name is also  
10 Randy Cheatham. I'm a part-time admin assistant for  
11 Green Acres Baptist Church. My husband is a store  
12 director for Super 1. We have three kids. They're all  
13 in school. And I spend time with my family.

14 THE COURT: Thank you.

15 PROSPECTIVE JUROR: Hello. My name is Kevin  
16 Kimbrell, Juror Number 16. My wife's name is Amy  
17 Kimbrell. I'm a computer technician for a inspection  
18 company at the local refinery. My wife is a registered  
19 nurse. I have two children, 4 and 1. And with what  
20 little spare time I have, I like to study biblical and  
21 other religious teachings and then also martial arts.

22 THE COURT: Thank you.

23 PROSPECTIVE JUROR: Hi. My name is Megan  
24 Morgan. I'm Juror Number 17. My husband's name is Ryan  
25 Morgan. I work with Daymon Worldwide doing private brand

1 development. My husband is a petroleum landman. We have  
2 one daughter who is not an adult yet. And in my spare  
3 time, I just like to spend it with her and my husband.

4 THE COURT: Thank you.

5 PROSPECTIVE JUROR: My name is Arthur  
6 McKenzie. I'm Juror Number 18. My spouse's name is Rita  
7 McKenzie. I'm a police officer for Chandler, Texas, here  
8 in Chandler. My wife retired from the DPS office. I  
9 have two children now. My daughter does psychology down  
10 in Austin; and my son, he's a factory worker up in  
11 Denning. And I like to fish on my time off.

12 THE COURT: Thank you.

13 PROSPECTIVE JUROR: Good morning. My name is  
14 Gloria Robinson. My spouse's name is Larry. I'm a  
15 retired program manager for Health and Human Services,  
16 and I currently went to work part-time for H&R Block. My  
17 spouse is a supervisor with the Palestine Regional  
18 Hospital. I have two adult children. My daughter is a  
19 psychologist with Texas Youth Commission, and my son is a  
20 manager at Kentucky Fried Chicken. In my free time I  
21 like to take pictures and scrapbook.

22 THE COURT: Okay. Thank you.

23 PROSPECTIVE JUROR: Good morning. My name is  
24 Jeff Hurley. My wife's name is Mary. I am an area  
25 general manager for the East Texas region of my credit

1 union. My wife is head librarian in Mineola, Texas. I  
2 have four children, two adults, one at SMU, one former  
3 Army after eight years. And in my spare time, I'm an  
4 actor/director/producer of theatre film and television  
5 ads.

6 THE COURT: Thank you.

7 PROSPECTIVE JUROR: Good morning. My name is  
8 Roy Cox. My wife's name is Joanne, 14 years. I'm a  
9 retired truck driver. I did that for 20 years. Her  
10 occupation is she works as a office manager or  
11 transportation manager for a company she's been with for  
12 20 years. I have six children, three boys and three  
13 girls. Two of the girls are housewives. One of the  
14 girls is retired military, a schoolteacher. Two of the  
15 boys are in construction, and one of the boys is a  
16 manager at Walmart. And I'm an elder in my church, and  
17 that pretty much takes up all of my spare time.

18 THE COURT: Okay. Thank you.

19 PROSPECTIVE JUROR: I'm Cynthia Duncan. My  
20 husband's name -- oh. I'm Juror 22. My husband's name  
21 is Bill Duncan. I am an elementary schoolteacher. My  
22 husband is a surveying engineer for a coal company. I  
23 have two grown children, one who will begin medical  
24 school in this summer and the other one who works in the  
25 music instrument business. In my spare time I watch TV

1 and read.

2 THE COURT: Thank you.

3 PROSPECTIVE JUROR: I'm Lynda David. I'm  
4 Juror Number 23. I am the assistant vice-president and  
5 marketing director for a local bank. My husband is Jerry  
6 David, and he is a machinist. We have two children. One  
7 is at Texas A&M, a political science major; and our  
8 youngest is a public relations major at Stephen F.  
9 Austin. And in my spare time I have a very expensive  
10 hobby of owning a ladies boutique also. So, that's my  
11 hobby.

12 THE COURT: Thank you.

13 PROSPECTIVE JUROR: Good morning. My name is  
14 Vicki Walter. My husband is Scott. I work as a physical  
15 therapist assistant at ETMC outpatient rehab system. My  
16 husband is manager for Perma Green Lawn. And I have two  
17 young adult children. One is an employee at  
18 LensCrafters, and the other one is a graphic designer.  
19 And I spend as much time with them as I can as I'm ready  
20 to have an empty nest.

21 THE COURT: Thank you.

22 PROSPECTIVE JUROR: Good morning. I'm Barbara  
23 Sharp. My husband's name is Don Sharp. I work for  
24 Trinity Valley Community College as a correctional  
25 education clerk. My husband is a teacher for Aldine ISD.

1 We have three adult children. Our oldest is a teacher in  
2 Pasadena ISD. Our middle child is a Super Senior at SFA.  
3 And our youngest child is traveling abroad in Australia  
4 for approximately a year. And in my spare time it's just  
5 busy with all of them.

6 THE COURT: Thank you.

7 PROSPECTIVE JUROR: My name is Carl Hoffman.  
8 I'm Juror 26. My wife's name is Barbara. I retired from  
9 Verizon Communications but presently working part-time  
10 with inline traffic control out of Bryan, Texas. My wife  
11 is a legal secretary for a law firm in Henderson. I have  
12 one adult child. She's an EMT. And in my spare time I  
13 just like to mess around on the 14 acres I have.

14 THE COURT: Okay. Thank you.

15 All right. Thank you very much for your  
16 responses. Before I turn this over to the lawyers, I  
17 have a few additional questions for the jury panel.  
18 First, I'd like to ask whether anyone here has a hardship  
19 that would make it difficult for him or her to serve on  
20 the jury. As I mentioned, this case will probably go  
21 through Friday and potentially even to next week and  
22 concluding Saturday morning. And if anyone has a  
23 hardship, you should stand up and let me know. And I  
24 don't mean a hardship is having to wake up early and get  
25 here to court. I mean having surgery or some other

1 important appointment that would prevent you from being  
2 here.

3 Is there anyone on the jury panel who would  
4 have a hardship?

5 Yes?

6 Could you give us your juror number, please?

7 PROSPECTIVE JUROR: Number 11, Marilyn  
8 Johnston. My husband has kidney stones, and he may have  
9 to go into the hospital for them to remove them this week  
10 so... I don't know if that's considered, but I would  
11 have to take him.

12 THE COURT: Okay. Thank you.

13 Is there anyone --

14 PROSPECTIVE JUROR: My name is Annie Spencer.  
15 I'm Juror Number 5. I help take care of my mom. She's  
16 91, and she can't stay by herself.

17 THE COURT: Okay. Thank you.

18 PROSPECTIVE JUROR: Matt Leach, Juror  
19 Number 6. It would create a substantial financial burden  
20 on me and my family, and that would cause a lot of  
21 problems so...

22 THE COURT: Because you wouldn't be able to go  
23 to work, you mean?

24 PROSPECTIVE JUROR: Yes, sir.

25 THE COURT: Okay. Anyone else?

1 All right. Unless there are objections from  
2 either the plaintiff or defendant, I'm inclined to excuse  
3 each of these three jurors on hardship grounds.

4 MR. ALBRITTON: We have no objection, your  
5 Honor.

6 MR. JONES: We agree, your Honor.

7 THE COURT: Okay. Thank you. I'm going to  
8 excuse the three of you, and you can leave now. We thank  
9 you for coming here today, and we will continue with the  
10 rest of the panel.

11 (Prospective Jurors 5, 6, and 11 exit the  
12 courtroom, 9:39 a.m.)

13 THE COURT: Okay. Now let me describe to you  
14 briefly the nature of this case. This is what's called a  
15 "patent infringement suit." The plaintiff, as I  
16 mentioned, is Stragent, LLC, and they own a patent and  
17 they are the plaintiff. They brought this suit. And as  
18 I also mentioned, the defendant is Intel Corporation; and  
19 Stragent accuses Intel of infringing two of its patents  
20 related to computer network processors that have  
21 specialized hardware to perform something called a "CRC  
22 operation." It's a kind of error check. And Intel is  
23 accused of violating these patents by making or using the  
24 patented invention.

25 Now, given that brief description, has anyone

1 heard anything about this specific case or has anybody  
2 worked for either of these companies or had a relative  
3 who has worked for either of these companies?

4 Yes. Could you stand and identify yourself?

5 PROSPECTIVE JUROR: I'm Juror Number 25, and  
6 my brother works for Intel Corporation in Oregon.

7 THE COURT: Okay. Thank you.

8 Anyone else?

9 All right. Thank you.

10 Now I'm going to ask the lawyers who will be  
11 involved in this case to stand and introduce themselves  
12 and their colleagues and any corporate representatives  
13 who are with them, and then I'm going to ask the jurors  
14 if any of them -- any of you know any of these lawyers or  
15 has had any relationship with them. It's unlikely, but  
16 we have to go through this process.

17 Mr. Albritton, do you want to start?

18 MR. ALBRITTON: Thank you, your Honor.

19 Good morning. I'm Eric Albritton. I'm a  
20 lawyer over in Longview. My office is in downtown on  
21 Tyler Street. With me is Barry Bumgardner. He's a  
22 lawyer from Fort Worth. And his partner Jaime Olin, who  
23 is also a lawyer in Fort Worth, the three of us will be  
24 involved in the trial of the case.

25 Seated here at the table with us is Kevin

1 Zilka. He's one of the owners of Stragent, and he'll be  
2 at the trial with us throughout.

3 Thank you very much, your Honor.

4 THE COURT: Okay. Mr. Campbell -- or  
5 Mr. Jones.

6 MR. JONES: Thank you, your Honor. My name is  
7 Mike Jones. I'm a lawyer here in Tyler, Texas. I  
8 represent Intel Corporation in this case. Trying this  
9 case with me will be Mr. Chad Campbell, seated right here  
10 to my right. Seated right here to my left will also be  
11 Mr. David Burman. And here on behalf of Intel  
12 Corporation. Their representative is Mr. Robert Maddox,  
13 seated right there. And I apologize to everybody for  
14 having my back turned to you.

15 THE COURT: Okay. Now, does anyone on the  
16 jury panel know any of these lawyers or corporate  
17 representatives or have any relationship with any of  
18 them?

19 No? Okay. Good.

20 Next I'm going to ask Mr. Albritton and  
21 Mr. Jones to read the list of witnesses that each side  
22 plans to call; and I'm going to ask you the same question  
23 with respect to the witnesses, that is whether you know  
24 them or have any relationship with them.

25 MR. ALBRITTON: Thank you very much, your

1 Honor.

2 We're going to be calling Kevin Zilka. We're  
3 going to be calling a gentleman by videotaped deposition  
4 named Walter Milliken. We're going to be calling a  
5 gentleman named Steve Milligan -- Milliken and Milligan.  
6 We're going to be calling a gentleman by the name of  
7 Harold Stone, a gentleman by the name of Chris Vellturo,  
8 and a gentleman by the name of him Henry Houh.

9 THE COURT: Okay. Mr. Jones?

10 MR. JONES: Yes. We will be calling a  
11 Mr. Gavin Stark. We will be calling a Mr. Robert Maddox.  
12 We will be calling a Ms. Mary Woodford. We will be  
13 calling Mr. Dana Hayter. We will be calling -- I may let  
14 Mr. Campbell take over at this point.

15 MR. CAMPBELL: Yes. We'll be calling a  
16 gentleman by the name of Debendra das Sharma, a gentleman  
17 by the name of Matt Adiletta, Brad Burres, and Dr. Harry  
18 Bims.

19 THE COURT: Okay. Does anyone on the juror  
20 panel know any of these witnesses or have any  
21 relationship with them?

22 I don't see any hands. Okay. Thank you.

23 All right. Now, there's just one more general  
24 question and this is really the most important question  
25 I'm going to ask you and that is if you're selected to

1 sit on this case, will you be able to render a verdict  
2 solely on the evidence presented at the trial and based  
3 on the law that I give you at the end of the trial and my  
4 instructions to you? And if the answer is no or you have  
5 any reservations on this, please let me know.

6 Okay. I don't see any hands. Thank you.

7 Now I'm going to turn the questioning over to  
8 the lawyers. They'll have about 20 minutes a side to ask  
9 you questions, and then we'll take a morning break.

10 So, Mr. Albritton.

11 MR. ALBRITTON: Thank you very much, your  
12 Honor.

13 This is not a timer. I'm not up here calling  
14 anybody, just in case you were wondering. Thank you very  
15 much.

16 May it please the court, Mr. Jones,  
17 Mr. Campbell.

18 Good morning. As I told you, I'm Eric  
19 Albritton. I'm a lawyer over in Longview. You had to  
20 tell us about yourself; so, I'll very quickly tell you  
21 about me. I'm married. My wife is a LPC. She's a  
22 counselor, although she stays at home and has for 16  
23 years because we've got a 16-year-old daughter who is a  
24 Viewette over at Longview High School. And we've got a  
25 little boy named Luke who is in the seventh grade. What

1 I do in my spare time, I like to hunt and fish; but I do  
2 lots of kids' activities. My daughter is a horseback  
3 rider. I go to lots of horse shows, and I go to football  
4 games.

5 This is the most unusual part of the trial.  
6 This is really the only time that we're going to get to  
7 hear your voices. And, so, it's important that you take  
8 that opportunity and talk to us because we're not --  
9 nobody -- and his Honor alluded to this. I am quite  
10 certain that you are all fair people. Okay? There is no  
11 question about that. But we all have our own life  
12 experiences that make us the right kind of juror for some  
13 cases and the wrong kind of juror for other kinds of  
14 cases. So, let me give you an example.

15 As I said, I have two kiddos. Okay? I would  
16 be not the right kind of person to sit on a jury in a  
17 criminal case, for instance, where the person was accused  
18 of hurting a teenaged child. That would be very hard for  
19 me based on my own personal experiences and who I am and  
20 where I am in life.

21 And, so, that's the reason we're asking these  
22 questions, not to see if you're fair but to see if this  
23 is the right kind of case for you. So, I would ask you  
24 to please visit with me and also Mr. Jones and tell us  
25 what you think because, interestingly enough, the people

1 who don't talk are the ones that always end up on the  
2 juries.

3 We've talked about Intel. Does anybody -- and  
4 I'm going to ask to see a show of hands. Does anybody  
5 here own Intel stock, stock in Intel Corporation?

6 Nobody?

7 Does anybody have a mutual fund that you  
8 believe includes Intel stock?

9 Yes, sir. That's Mr. -- I'm sorry -- that's  
10 Mr. Wallace -- I'm sorry. Mr. Roark?

11 MR. ALBRITTON: Yes.

12 THE COURT: Are you related to Woody Roark?

13 PROSPECTIVE JUROR: I am.

14 MR. ALBRITTON: How are you related?

15 PROSPECTIVE JUROR: He's my father.

16 MR. ALBRITTON: All right. Anybody other than  
17 Mr. Roark think that they own a mutual fund?

18 Yes, sir. Mr. Branch?

19 PROSPECTIVE JUROR: Yes. I'm not sure, but it  
20 could. It's a target retirement date fund at Vanguard;  
21 and, so, it very well may.

22 MR. ALBRITTON: Okay.

23 PROSPECTIVE JUROR: I'm not sure.

24 MR. ALBRITTON: Thank you very much.

25 Anybody else?

1 Yes, ma'am. That's Ms. David?

2 PROSPECTIVE JUROR: What if you don't know?

3 MR. ALBRITTON: You don't know?

4 PROSPECTIVE JUROR: I know I have mutual  
5 funds, but I don't -- and I know they are in some tech  
6 funds, but I don't know if it is in Intel.

7 MR. ALBRITTON: Okay. Thank you very much.  
8 That's Ms. David, Number 23.

9 Anybody else?

10 Yes, sir. Mr. Kimbrell?

11 PROSPECTIVE JUROR: Yes. I'm the same  
12 situation.

13 MR. ALBRITTON: Same situation. Thank you,  
14 Mr. Kimbrell, Number 16.

15 All right. Now let me ask you this: Has  
16 anybody ever gone out and bought a computer product  
17 specifically because it included an Intel component? So,  
18 let me say it a different way. I see Ms. Sharp is  
19 shaking her head. Your brother, of course, works at  
20 Intel.

21 Mr. Kimbrell raising your hand.

22 So, let me ask it more broadly to make sure we  
23 catch everybody. Anybody ever go out and specifically  
24 buy some computer product because -- specifically because  
25 it had an Intel component in it?

1 Nobody other than Mr. Kimbrell and Ms. Duncan,  
2 22, you're raising your hand. Anybody else?

3 THE COURT: There are two on the left-hand  
4 side here.

5 MR. ALBRITTON: Thank you very much, your  
6 Honor.

7 That's Mr. Roark and Mr. --

8 PROSPECTIVE JUROR: Gibbs.

9 MR. ALBRITTON: Mr. Gibbs.

10 PROSPECTIVE JUROR: Yes.

11 MR. ALBRITTON: Okay. Thank you.

12 Yes, ma'am. Ms. Robinson?

13 PROSPECTIVE JUROR: We brought a computer that  
14 had an Intel processor.

15 MR. ALBRITTON: Yes, ma'am. Did you buy it  
16 specifically because it had an Intel processor?

17 PROSPECTIVE JUROR: Right.

18 MR. ALBRITTON: Okay. Thank you,  
19 Ms. Robinson, Number 19.

20 Has anybody ever gone out and purchased a chip  
21 itself, an Intel chip, not a computer system but an  
22 actual Intel processor? Anybody ever done that?

23 Thank you.

24 Mr. Jones introduced himself. And I wanted to  
25 ask a little bit of a broader question. I know, for

1 instance, Ms. Cheatham, you're involved with Green Acres  
2 Church; is that right?

3 PROSPECTIVE JUROR: Yes.

4 MR. ALBRITTON: Do you know Mr. Jones? Does  
5 he look familiar to you?

6 PROSPECTIVE JUROR: No. I actually work out  
7 at the south campus, and that's where I attend church.

8 MR. ALBRITTON: Okay, great. Thank you very  
9 much.

10 Now, Mr. Jones is in a law firm -- a pretty  
11 large law firm here, and there is a gentleman named John  
12 Bufe.

13 If you would, stand, John.

14 John Bufe. And Allen Gardner is another  
15 lawyer that is at his law firm. Has anybody -- does  
16 anybody know Mike Jones or anybody else that works at the  
17 law firm called "Potter Minton"? Anybody know any  
18 lawyers or legal assistants? They are the ones who  
19 actually do all the hard work. Anybody know any legal  
20 assistants at the law firm of Potter Minton?

21 All right. There is also another law firm  
22 involved here called "Parker, Bunt & Ainsworth." Robert  
23 Parker, Chris Bunt, and Charlie Ainsworth are involved.

24 Chris, if you would, stand up.

25 Does anybody know Chris Bunt or Charlie

1 Ainsworth or Robert Parker?

2 Okay. Great. Thank you very much.

3 If you would, bring up the first slide,  
4 please.

5 What I'm going to do, ladies and gentlemen, is  
6 we don't have a lot of time so I'm going to just show you  
7 a few slides and I'm going to ask you some questions and  
8 basically we'll just take a show of hands and get numbers  
9 and then it will make it go.

10 Now, I'm not talking specifically about this  
11 case. I'm not arguing the case in any way. I just want  
12 to ask you some general questions about how you feel  
13 about things. Okay?

14 One of the things his Honor is going to tell  
15 you in this case is that the plaintiff Stragent has to  
16 prove infringement by what's called a "preponderance of  
17 the evidence." Preponderance means all you've got to  
18 do -- in a football analogy -- is get slightly over  
19 midfield. And if we move the ball just past midfield,  
20 we've proven our case by a preponderance of the evidence.

21 Now, in this case Intel is saying that the  
22 patents are invalid. They're saying that the Patent  
23 Office should not have ever issued these patents in the  
24 first instance. That's got a different burden. It's  
25 called "clear and convincing evidence." And his Honor,

1 Judge Dyk, is going to give you specific instructions  
2 about what that means.

3 But back to my Cowboys analogy, that means  
4 you've got to push the ball substantially past midfield  
5 and down into the red zone. So, as you can tell, the  
6 plaintiff has got this lesser burden, preponderance of  
7 the evidence; and the defendants, to prove invalidity,  
8 have this much higher burden, clear and convincing  
9 evidence.

10 Raise your hand if you think that seems  
11 fundamentally unfair to you. Nobody? Okay.

12 What I want to visit with you about now is we  
13 know that there have been some folks -- there was a  
14 question on your questionnaire about if you had ever been  
15 a defendant in a lawsuit. Let me see a show of hands  
16 again, anybody that's ever been sued.

17 Now I want to broaden out the question. Have  
18 any of you ever had a family member or a close friend  
19 that was sued and it was a lawsuit that you knew about?

20 Mr. Roark?

21 PROSPECTIVE JUROR: Yes.

22 MR. ALBRITTON: Okay. Anybody else?

23 Okay. There are folks who believe that  
24 lawsuits are a bad thing, and there are folks that -- let  
25 me put it simply. Some folks have very strong feelings

1 about lawsuits. Okay? And one of the beautiful things  
2 about this country, of course, is that we are all allowed  
3 to have our own opinions. So, what I'd like to do now is  
4 ask you to raise your hand if you agree or strongly agree  
5 with the following. And this is going to be the way I  
6 ask a series of questions.

7 "I have been negatively impacted by lawsuits."  
8 Raise your hand if you feel like you strongly agree or  
9 agree that you have been negatively impacted.

10 Mr. Branch, Number 3; Mr. Roark, Number 9.

11 Anybody else agree?

12 Yes, sir. Mr. -- that's Mr. Hurley,  
13 Number 21.

14 Yes, sir. That's Mr. McKenzie, Number 18.

15 Anybody else?

16 PROSPECTIVE JUROR: That was 20.

17 MR. ALBRITTON: 20, I'm sorry. Mr. Hurley,  
18 okay.

19 The next one is -- let me strike this. I'll  
20 try to get higher -- move on.

21 Let me ask you this. This case -- sometimes  
22 lawsuits are filed by people, and sometimes they are  
23 filed by companies. Okay? And in some situations the  
24 company that's filing the lawsuit bought the patent,  
25 bought the property from somebody else. What I want to

1 know is who agrees or strongly agrees with this  
2 statement. "I would award less money to a company that  
3 bought a patent than to a person that personally  
4 developed the invention."

5 Does anybody agree or strongly agree with that  
6 statement?

7 Nobody?

8 Also in a lawsuit you're going to hear, ladies  
9 and gentlemen, that -- sometimes witnesses are going to  
10 get right here on this very witness stand, and they're  
11 going to testify live. But sometimes witnesses can't  
12 come to trial, for a variety of reasons; and, so, what  
13 you will do is you will get to hear their deposition.  
14 Okay? That means they won't be here in Tyler. You'll  
15 just get to watch their videotape of what they said  
16 before under oath.

17 What about this: Does anybody agree or  
18 strongly agree with the following statement? "I would  
19 need to hear from the person who came up with the  
20 invention in order to find for somebody in a lawsuit."  
21 Anybody strongly agree with that or agree with that?

22 Okay. So, the flip side is the truth, right?  
23 If you don't strongly agree with that, you can certainly  
24 consider finding for somebody even if they don't come  
25 here live. Everybody agree with that?

1           Okay. Let me ask you this. Sometimes in  
2 lawsuits companies just like this -- there are disputes  
3 between parties. Okay? It would be nice if everybody  
4 was able to get along and reach agreements outside of  
5 court but sometimes that doesn't happen and you have to  
6 come to court and have a lawsuit. Some people just think  
7 that's distasteful. Okay? And that's fine. As I said,  
8 everybody is entitled to their own view of that.

9           I want to ask you this: "If I were on a  
10 jury" -- think about this yourself -- "I would be less  
11 likely to find in favor of a company that had sued  
12 another person before." Who strongly believes that or  
13 agrees with that?

14           What about you, Mr. Priddy? Do you agree or  
15 strongly agree with that statement?

16           PROSPECTIVE JUROR: I agree.

17           MR. ALBRITTON: You do agree with that  
18 statement.

19           Anybody else?

20           What about you, Mr. Roark? Are you like  
21 Mr. Priddy? Do you agree or strongly agree with that  
22 statement?

23           PROSPECTIVE JUROR: No, not really.

24           MR. ALBRITTON: Not really. Okay.

25           Anybody else agree with Mr. Priddy? That is,

1 if you were on a jury, you would be less likely to find  
2 for a company that had sued before?

3 Yes, ma'am. That's Ms. --

4 PROSPECTIVE JUROR: 24.

5 MR. ALBRITTON: Yes, ma'am, Ms. Walter,  
6 Number 24.

7 PROSPECTIVE JUROR: It would depend on how  
8 much suing they had been doing.

9 MR. ALBRITTON: Okay. Thank you. That's a  
10 very relevant question. I agree.

11 Ms. Sharp, do you feel the same way?

12 PROSPECTIVE JUROR: Yes.

13 MR. ALBRITTON: Thank you.

14 Anybody else?

15 Ms. Sharp is Number 25.

16 Yes, sir. Mr. Kimbrell, 16, do you agree or  
17 strongly agree with that also?

18 PROSPECTIVE JUROR: Yes, with her stipulation  
19 of how much --

20 MR. ALBRITTON: Depends on how many times.

21 PROSPECTIVE JUROR: Yes.

22 MR. ALBRITTON: Thank you very much.

23 Let me ask you this. Sometimes in situations  
24 one company should have to pay a certain amount of money  
25 than another company, based on the individual facts and

1 circumstances. What I want to know is this. Who agrees  
2 or strongly agrees with this statement, "No company  
3 should have to pay more for using a patent than another  
4 company using the same patent even if they make more  
5 money from using it"? Now, that's a lot of words; so,  
6 let me repeat it to you again. It's a little -- I wrote  
7 the question. It's not the best one in the whole world,  
8 I'll admit.

9 "No company should have to pay more money for  
10 using a patent than another company had to pay for using  
11 the same patent even if that previous company had made a  
12 lot more money." Does anybody feel that way?

13 Yes, sir. Mr. Roark, you feel that way.

14 Yes, sir. Mr. -- is that Mr. Hoffman?

15 PROSPECTIVE JUROR: Correct.

16 MR. ALBRITTON: 26.

17 That's Ms. Walter, Number 24; Ms. David,  
18 Number 23; Ms. Robinson, Number 19; Mr. Kimbrell,  
19 Number 16; Ms. Sharp, Number 25. Then we've got  
20 Mr. Priddy, Number 8. We've got Mr. Branch, Number 3.  
21 We've got Ms. Jones, Number 1. Then we have Ms. Talbert,  
22 Number 7, and Ms. Morris, Number 14. Thank you very  
23 much.

24 Yes, ma'am?

25 PROSPECTIVE JUROR: Can I ask a question?

1 MR. ALBRITTON: Yes, ma'am.

2 PROSPECTIVE JUROR: So, basically you're  
3 saying after they purchase it they will make more money  
4 from it?

5 MR. ALBRITTON: No, ma'am. What I'm saying is  
6 this. If you've got a company that is using somebody's  
7 patent without permission -- okay -- and they then  
8 ultimately come in and do the right thing and pay money  
9 for the right to use it. And then there is another  
10 company that doesn't have permission and is using it but  
11 is making lots and lots and lots and lots more money.  
12 Okay? Do you think it's unfair that that later  
13 company -- do you think that later company that's made  
14 way more money than that former company should only have  
15 to pay what the former company paid?

16 PROSPECTIVE JUROR: And no backpay?

17 MR. ALBRITTON: Right.

18 PROSPECTIVE JUROR: Okay. Then I agree with  
19 that.

20 MR. ALBRITTON: Okay.

21 Let me ask you this. Sometimes in the -- I  
22 call them "tinkerers" -- yes, sir.

23 PROSPECTIVE JUROR: Okay. That question is  
24 very misleading to some, or at least to me. You said for  
25 them using a patent.

1 MR. ALBRITTON: Yes, sir.

2 PROSPECTIVE JUROR: Now, you didn't say  
3 illegally using a patent. I thought it was you purchased  
4 the patent and a company B purchased, both should  
5 purchase at the same price and whether the companies make  
6 money or not is not the patent holder's business.

7 PROSPECTIVE JUROR: I agree.

8 PROSPECTIVE JUROR: I agree.

9 MR. ALBRITTON: Okay. It was a poorly phrased  
10 question.

11 PROSPECTIVE JUROR: But that would have been  
12 illegal infringement.

13 MR. ALBRITTON: All right. I apologize.

14 PROSPECTIVE JUROR: Or if they're guilty in  
15 this case, which they probably are.

16 MR. ALBRITTON: Okay. I apologize for the  
17 confusion. I'm very sorry. What I'm just asking --  
18 well, I've only got a few more minutes. I understand,  
19 and certainly there was no intention to be misleading  
20 you. It was just confusing. But I think I've got an  
21 understanding of where folks are.

22 Sometimes there are people that -- I call them  
23 "tinkerers," you know, folks that are always working on  
24 things, a house, or trying to fix things. I'm not one of  
25 those people. Okay? Because some people are more

1 comfortable with technology than other people are. So,  
2 I've got this question for you. Who agrees or strongly  
3 agrees with the following? "I am comfortable talking  
4 about computers and would not hesitate to share my  
5 opinions about computers with other people."

6 Okay. So, raise your hand if you agree or  
7 strongly agree that you are comfortable talking about  
8 computers and would not hesitate to share your opinions  
9 about computers with other people.

10 Mr. Gibbs, Number 10. Thank you, Mr. Gibbs.

11 Ms. David, Number 23; Mr. Kimbrell, Number 16.

12 Yes, sir. Mr. Hoffman, Number 26.

13 PROSPECTIVE JUROR: I know nothing.

14 MR. ALBRITTON: You know nothing. Okay.

15 Thank you very much, Mr. Hoffman.

16 Now, ladies and gentlemen, there are some  
17 organizations out there like -- it's called "East Texans  
18 Against Lawsuit Abuse" or "Texans for Lawsuit Reform."  
19 Is anybody a member of any organizations such as that?

20 Anybody got a close family member or friend  
21 that's a member of an organization like East Texans  
22 Against Lawsuit Abuse?

23 All right. Nobody.

24 Let me ask you the last question.

25 Sometimes -- I've done this a number of times here in

1 Tyler and elsewhere in Texas; and sometimes somebody  
2 goes, "You know what? Mr. Albritton, if you could just  
3 ask me one more question, if he had just asked me this, I  
4 would have told him something that's important." Is  
5 there something, ladies and gentlemen, that you're  
6 sitting there thinking, "Wow. If I were Eric Albritton,  
7 I would want to know about this. I should tell him this  
8 if he asks me"? Is there anything like that out there,  
9 any question, any information that you think is important  
10 that I haven't had a chance to specifically ask you  
11 about?

12                   Nothing? All right. Great. Thank y'all very  
13 much.

14                   THE COURT: All right, Mr. Jones.

15                   MR. JONES: Thank you, your Honor.

16                   Ladies and gentlemen of the jury panel, my  
17 name is Mike Jones. I'm a lawyer in Tyler, Texas. I've  
18 been doing this for, I think, 37 years. My wife and I  
19 have lived here for those 37 years and raised 2 children  
20 here, and we have 3 grandchildren.

21                   Let me start out by doing one thing before I  
22 ask you a question; and that is on behalf of myself and  
23 particularly on behalf of my client Intel Corporation, I  
24 want to thank each and every one of you for your time and  
25 for your service as jurors. This is very a important

1 duty. Frankly, this is a very important case to Intel.  
2 And in order to resolve the factual issues of this  
3 dispute, we need your help and we thank you for being  
4 here and we thank you for the time that you spend in this  
5 endeavor.

6 The first question I want to ask you in this  
7 case -- and I'll pick on you, Mr. Hoffman, if you don't  
8 mind -- is this: Mr. Hoffman, you just said, in talking  
9 about a question that Mr. Albritton asked you, that you  
10 said, well, it depended upon whether they were guilty in  
11 this case which they probably are. Do you recall that?

12 PROSPECTIVE JUROR: Yes, I do.

13 MR. JONES: Okay. You can understand why that  
14 might make me nervous because, you know, my client's  
15 position in this case is they are not guilty of  
16 infringement, that they don't infringe the patent at all.  
17 I assume you didn't mean that you had already formed any  
18 opinion. Is that fair?

19 PROSPECTIVE JUROR: I probably lean more one  
20 way than the other already.

21 MR. JONES: Okay. Sir, are you already, as we  
22 started this case, leaning against my client Intel? Is  
23 that fair?

24 PROSPECTIVE JUROR: Just the fact that we're  
25 having to go through this, yes.

1 MR. JONES: Thank you very much. I appreciate  
2 your candor. Thank you for telling us that.

3 THE COURT: Could you identify the juror  
4 number for us?

5 MR. JONES: Yes, sir. And that is Juror  
6 Number 26, your Honor, Mr. Hoffman.

7 Thank you so much for your candor, sir. I  
8 really do appreciate that.

9 Which brings me to my question, my first  
10 question, which is probably the most important question  
11 I'm going to ask today, is who agrees with Mr. Hoffman?  
12 Who says, "Mr. Jones, we wouldn't be here today if Intel  
13 hadn't done something wrong?" Anybody else -- and I  
14 thank Mr. Hoffman for saying that. But does anybody else  
15 agree with that? You know, you sit there and go, "Yeah,  
16 if I'm really going to be honest with you, Mr. Jones,  
17 you're behind." Anybody else feel that way? Nothing  
18 wrong with feeling that way. If you do, just please  
19 raise your hand.

20 Another way to ask the question is does  
21 anybody think, you know, where there's smoke there's  
22 fire? You know, we wouldn't be in federal court, Judge  
23 Dyk wouldn't be here if there wasn't something to all of  
24 this? Anybody feel that way?

25 Thank you.

1           My next three questions are going to be about  
2 some legal principles, and they're going to be disputes  
3 in this case. We're not here to argue the disputes in  
4 this case; but there are going to be disputes in this  
5 case over, I think, three major areas. The first one is  
6 whether or not Intel products infringe.

7           Now, did y'all see the film about patent  
8 lawsuits? Y'all all saw the film. In the film it told  
9 us that in patents there are things called "claims" and  
10 those claims have elements and those elements describe  
11 the patented invention and describe the boundaries of  
12 what the people who own the patent, the boundaries of  
13 their rights. And I believe the film also said -- and  
14 you may be instructed on this at some point in this  
15 trial -- that in order for Intel products to infringe,  
16 they must meet or contain all of the elements of any  
17 claim that you find infringement of.

18           Now, does anybody disagree with that concept  
19 that all of the elements of a claim must be in a product  
20 for it to infringe? Anybody disagree with that concept?

21           Anybody think that's nitpicking, that 9 out of  
22 10 ought to be good enough, 99 percent out of a hundred  
23 ought to be good enough, close ought to be good enough?  
24 Anybody feel that way?

25           Thank you.

1 Another issue -- and again we're not here to  
2 argue it. Another issue in this case is going to be  
3 whether or not the patents are valid. And the film, I  
4 believe it said -- told you that a defendant has every  
5 right to come into court and to contend that a patent may  
6 be valid, that that's part of the patent system and Intel  
7 is doing that. Does anybody disagree with that concept?  
8 Does anybody think that if the Patent Office issued a  
9 patent, then Intel shouldn't be able to come to court and  
10 question its validity? Anybody feel like that?

11 I believe the film also told you a concept  
12 that you as jurors play a role in the patent system. It  
13 was your role, it was your function in the patent system  
14 to decide the factual issues concerning validity of these  
15 patents. Does anybody feel uncomfortable with that role?  
16 Does anybody say, "I just can't do that role even if  
17 that's the law"?

18 Anybody say, "If the patent examiner did it, I  
19 don't want to redo it"? Anybody feel like that?

20 Thank you so much.

21 The final issue that I would like to bring up  
22 that's going to be disputed in this case is the question  
23 of damages and how much is owed. And I want you to know  
24 that Intel expects to present evidence on each and every  
25 issue in this case.

1                   Now, one time after I got through trying a  
2 case in front of a state jury, one of the jurors told me  
3 that the mere fact I presented evidence on damages, that  
4 they inferred from that that I was admitting that my  
5 client owed something. Now, does anybody feel that way?  
6 Do you feel merely because Intel will present evidence on  
7 every factual issue including damages, that by doing that  
8 somehow we admit that we owe something? Anybody feel  
9 like that?

10                   Thank you so much.

11                   Now, before today had anyone ever heard of the  
12 plaintiff corporation Stragent Corporation?

13                   Before today had you ever heard of the  
14 corporations Aloft Media, Azure, or Oso Innovations?  
15 Ever heard of those companies?

16                   Mr. Albritton mentioned that this patent had  
17 been purchased -- I think it was purchased from an entity  
18 known as "BBN." Have you ever heard of BBN Corporation?

19                   How about its -- I believe it was a affiliate  
20 of Raytheon Corporation, the defense contractor. Any of  
21 you familiar with Raytheon Corporation?

22                   Thank you.

23                   And Juror Number 3 -- I believe that is  
24 Mr. Branch.

25                   PROSPECTIVE JUROR: Yes, sir.

1 MR. JONES: Do you have any relationship with  
2 them or just know of them?

3 PROSPECTIVE JUROR: No. I just know of them.

4 MR. JONES: Thank you, sir. And I believe it  
5 was also -- if I remember, it was Juror Number 8,  
6 Mr. Priddy. Do you have any relationship with them?

7 PROSPECTIVE JUROR: No. I just -- a friend of  
8 mine works for them.

9 MR. JONES: Thank you, sir.

10 THE COURT: There is another juror over here  
11 to your right.

12 MR. JONES: Excuse me. And that would be  
13 Juror Number 20, Mr. Hurley, right, sir?

14 PROSPECTIVE JUROR: Yes.

15 MR. JONES: Do you have any relationship with  
16 them?

17 PROSPECTIVE JUROR: I worked for them for  
18 several years, and my father retired from them.

19 MR. JONES: Okay. And what division were you  
20 in, or what --

21 PROSPECTIVE JUROR: In Greenville, their  
22 aircraft unit.

23 MR. JONES: And I believe we have another one  
24 on this row.

25 PROSPECTIVE JUROR: Just a friend that worked

1 for them for ten years.

2 MR. JONES: Thank you. And that would be  
3 Juror Number 16, Mr. Kimbrell, I believe.

4 PROSPECTIVE JUROR: Yes.

5 MR. JONES: And then Juror Number 23,  
6 Ms. David?

7 PROSPECTIVE JUROR: Yes.

8 MR. JONES: And --

9 PROSPECTIVE JUROR: I used to be in economic  
10 development, and I just knew them through the economic  
11 development world.

12 MR. JONES: Thank you. I appreciate it.  
13 And Juror Number 9, I believe that's  
14 Mr. Roark, right, sir?

15 PROSPECTIVE JUROR: Yes.

16 MR. JONES: And do you just know of them, or  
17 did you have some type of relationship?

18 PROSPECTIVE JUROR: I was in the military. I  
19 tested their products.

20 MR. JONES: You tested their products.

21 PROSPECTIVE JUROR: Yeah.

22 MR. JONES: Thank you. Thank you, sir.

23 Now, the inventor in this case, I think it  
24 would be unusual if any of you would know him; but I'll  
25 ask about that. The inventor of these patents is a

1 Mr. Walter Milliken. Anybody know him, Walter Milliken?

2 There are a number of attorneys in this case  
3 that have appeared for Stragent. Not all of them have  
4 been mentioned so far; but they include Ms. Debra  
5 Coleman, Mr. Barry Bumgardner, Mr. Jaime Olin, Mr. Casey  
6 O'Neill, Mr. Shawn Latchford, Mr. -- excuse me --  
7 Ms. Andralee Lloyd, Mr. Michael Benefield, Mr. Michael  
8 Joffre, and Ms. Melanie Bostwick.

9 Does anybody know any of those attorneys that  
10 have appeared on behalf of Stragent?

11 Thank you.

12 Now I'd like next to turn your attention to my  
13 client, and a number of you said you knew of my client.  
14 Some of you said you had used my client's products. Have  
15 any of you had bad experiences with my client's products?

16 And, Mr. Maddox, I can take it. If you have,  
17 you can tell us.

18 Has anybody had bad experiences with Intel's  
19 products?

20 Have any of you seen television programs about  
21 Intel or heard radio shows about Intel or seen newspaper  
22 or magazine articles about Intel that you read that have  
23 caused you to form opinions about Intel before today? Do  
24 you have an opinion about Intel as a corporation?  
25 Anybody have anything like that?

1 Yes, sir, Mr. Roark.

2 PROSPECTIVE JUROR: Yeah. I have a laptop I  
3 bought because it had Intel in it.

4 MR. JONES: Thank you, sir.

5 PROSPECTIVE JUROR: I strictly bought it for  
6 that reason.

7 MR. JONES: Thank you, sir. I appreciate it.  
8 Excuse me. I'm sorry. You're juror?

9 PROSPECTIVE JUROR: Number 25.

10 MR. JONES: Thank you.

11 PROSPECTIVE JUROR: Just because my brother  
12 works for Intel, I mean, he's talked about all of the  
13 products. It's not a magazine or book, but he feeds me  
14 information so...

15 MR. JONES: Thank you, Ms. Sharp. I  
16 appreciate it.

17 Yes. Juror Number 16, Mr. Kimbrell.

18 PROSPECTIVE JUROR: In my earlier years I was  
19 a computer salesman; and, you know, I would recommend  
20 Intel.

21 MR. JONES: Thank you.

22 And Juror Number 24, Ms. Walter.

23 PROSPECTIVE JUROR: I don't necessarily have a  
24 bad experience with Intel. I have had bad experience  
25 with computers, and I just remember sitting on the phone

1 one day for five hours until Hewlett-Packard paid me a  
2 hundred dollars to get my money back out of a computer  
3 where -- I think there was an invested interest where  
4 there was a time bomb going off. Anyway, they paid me  
5 back.

6 MR. JONES: Well, congratulations on your  
7 patience and thank you.

8 And Juror Number 19, Ms. Robinson.

9 PROSPECTIVE JUROR: My experience with Intel  
10 is just from TV commercials, HSN. I shop on TV and they  
11 also speak very highly of Intel products and that's why I  
12 bought the computer is through advertisements and I've  
13 never had a problem.

14 MR. JONES: Thank you so much. Thank you.

15 Now, there had been a mention that, you know,  
16 these parties may have been in other lawsuits. There was  
17 a mention of that. Does anybody have any knowledge about  
18 any lawsuits you've heard about or read about that  
19 involve either Intel or involve Stragent? Anybody have  
20 any knowledge like that?

21 I'm going to ask you one of those "do you  
22 strongly agree" questions that you just heard before.  
23 And the question is simply this. In a case where a  
24 smaller business sues a larger business, I would tend to  
25 favor the smaller business. Anybody strongly agree with

1 that question?

2 Thank you.

3 Has any one of you had yourself personally or  
4 had a family member that had a significant dispute, a  
5 time-consuming dispute with a large corporation besides  
6 Hewlett-Packard? Anybody had a significant  
7 time-consuming dispute?

8 Yes, sir, Mr. Hurley, Number 20.

9 PROSPECTIVE JUROR: About a four-month dispute  
10 over warranty claims with a Microsoft product.

11 MR. JONES: Thank you, sir.

12 And it would be Juror Number 23, Ms. David.

13 PROSPECTIVE JUROR: I don't know if this is --  
14 but it is a large corporation. It was a medical  
15 malpractice suit against a large hospital.

16 MR. JONES: Okay. And did you file?

17 PROSPECTIVE JUROR: Our family filed.

18 MR. JONES: Okay. Thank you, ma'am.

19 Anybody else?

20 Thank you so much.

21 Do any of you have any knowledge, personal  
22 knowledge or knowledge from family or friends, about how  
23 the U.S. Patent and Trademark Office operates? Does  
24 anybody know anything about the Patent Office?

25 I believe there was one person that indicated

1 that they had filed or received a patent, which was Juror  
2 Number 10, Mr. Gibbs, who --

3 PROSPECTIVE JUROR: I didn't.

4 MR. JONES: Okay.

5 PROSPECTIVE JUROR: A former employer of mine,  
6 he filed patents all of the time, just out of a whimsy.  
7 He did it a lot. Several were granted to him. I don't  
8 know anything about the process. I just know that he got  
9 patents.

10 MR. JONES: Is there anything about that that  
11 would cause you to lean one way or another in this case?

12 PROSPECTIVE JUROR: No.

13 MR. JONES: Has anybody ever been a friend of  
14 or had any type of knowledge of a patent examiner?

15 Anybody ever received any information from  
16 them or somebody that worked with them about, you know,  
17 how many applications they reviewed or anything like  
18 that?

19 Thank you.

20 Now, I'm not going to ask this question, go  
21 into any detail about it. I just want to know if it has  
22 occurred. Have any of you ever been treated  
23 significantly unfairly by an employer? And if you would,  
24 just raise your hand.

25 Juror Number 9, Mr. Roark; and we have Juror

1 Number 14, Ms. Morris. Thank you.

2 Anybody else?

3 And Juror Number 16, Mr. Kimbrell. Thank you.

4 Now, who in high school, when you were going  
5 through high school -- which of you said, you know, "I  
6 was really good in math and science. Those were the  
7 subjects I excelled at. They were my best subjects"?  
8 Which of you could say that?

9 Okay. Juror Number 10, Mr. Gibbs.

10 PROSPECTIVE JUROR: Yes, sir.

11 MR. JONES: Juror Number 12, Mr. Leffall. Am  
12 I saying that right?

13 PROSPECTIVE JUROR: Leffall.

14 MR. JONES: Thank you, sir.

15 Juror Number 14, Ms. Morris; Juror Number 1,  
16 Ms. Jones.

17 PROSPECTIVE JUROR: 7.

18 MR. JONES: 7. I'm sorry. My eyes are bad.  
19 I apologize. So, that would be Juror Number 7,  
20 Mr. Campbell, Ms. Talbert. I apologize.

21 Juror Number 15. We have Juror Number 17,  
22 Juror Number 21, and Juror Number 24. Thank you so much.

23 Now, who of you are so good with computers  
24 that your friends and family come to you for advice? Who  
25 would say that about themselves? Anybody?

1 Mr. Kimbrell, Juror Number 16. All right.

2 Thank you.

3 Now, my final two questions -- I think I've  
4 run out of time, but my final two questions -- well, let  
5 me ask one other question; and I'll get down to my final  
6 two. How many of you have ever written a letter to the  
7 editor on any subject matter or called a radio talk show  
8 about any subject matter? Anybody ever done that? I've  
9 done that.

10 Mr. Kimbrell, Number 16; Mr. Hurley,  
11 Number 20.

12 Anybody else?

13 Mr. Roark, Number 9.

14 Anyone else?

15 Thank you.

16 Okay. Final two questions, probably the most  
17 important I'll ask you. Prior to today, has anyone ever  
18 heard anything about or have any knowledge of any aspect  
19 of this case? I mean, is today the first time you've  
20 ever heard about this case? If so, remain silent. But  
21 if you say, you know, "I think I've heard something about  
22 this case before we got here today," if that's your  
23 situation, would you raise your hand and tell me about  
24 it?

25 Yes. Thank you, ma'am. And Juror Number 23,

1 Ms. David, let me ask the question very specifically.  
2 Before today you've heard something or received some  
3 information about this particular case?

4 PROSPECTIVE JUROR: I don't remember where I  
5 heard it, though.

6 MR. JONES: Okay. Thank you, ma'am.

7 PROSPECTIVE JUROR: I just don't remember, but  
8 I do remember hearing something.

9 MR. JONES: Okay. Do you remember what you  
10 heard?

11 PROSPECTIVE JUROR: No, just that there was --  
12 I don't remember. I wish I did, but I don't remember  
13 where I heard it. It was on the news here somewhere.

14 MR. JONES: Okay.

15 PROSPECTIVE JUROR: Because I do read the news  
16 regularly.

17 MR. JONES: Thank you, ma'am.

18 PROSPECTIVE JUROR: I'm sorry. I don't  
19 remember.

20 MR. JONES: Thank you.

21 And then the other person that raised their  
22 hand I believe was Juror Number 24, Ms. Walter. And how  
23 have you heard something about this?

24 PROSPECTIVE JUROR: Kind of the same way.  
25 Something vague in my head. I read headlines a lot and

1 Intel just strikes me and I don't have any opinion about  
2 any of those. So, I don't remember anything specific.

3 MR. JONES: Okay. Does that knowledge  
4 influence either of you in any way?

5 PROSPECTIVE JUROR: No.

6 PROSPECTIVE JUROR: No, because I don't  
7 remember. It seems like it's been awhile since I heard  
8 it so...

9 MR. JONES: Thank you.

10 Anybody else?

11 All right. My final question to you would be  
12 this. It's much like what Mr. Albritton just asked you.  
13 I could stand here all day and probably not get to the  
14 right question. But is there any reason, any reason any  
15 of you know of that you can't be a fair and impartial, a  
16 wise juror for Intel in this case? Any reason any of you  
17 know that that I need to know about?

18 Yes, ma'am.

19 PROSPECTIVE JUROR: I just -- Juror Number 25.  
20 I really feel like my brother working with Intel, I would  
21 be partial for Intel's side, in all fairness. I would  
22 love to say okay, but I don't know that I can.

23 MR. JONES: I appreciate that. Thank you for  
24 your candidness. Thank you for saying that.

25 Juror Number 24.

1 PROSPECTIVE JUROR: After thinking about  
2 something you had said earlier about the claim and would  
3 I be able to make a decision based on the fact that a  
4 hundred percent of it needed to be the same and why is it  
5 90 percent of it, I don't know that I could be fair with  
6 that.

7 MR. JONES: Thank you, ma'am. I appreciate  
8 your candor. Thank you so much.

9 Anybody else? Anything else I need to know?

10 Yes, sir, Mr. Kimbrell.

11 PROSPECTIVE JUROR: Actually, I second her  
12 statement.

13 MR. JONES: Okay. Thank you. And you're  
14 referring to the statement of Juror Number 24, right?

15 PROSPECTIVE JUROR: Yes.

16 MR. JONES: Thank you so much. I appreciate  
17 your candor.

18 THE COURT: Could the last two jurors clarify  
19 what was meant by that answer? I was not clear.

20 MR. JONES: Certainly. Juror Number 24, the  
21 court would like you to clarify exactly what you're  
22 talking about when you refer to the 99 percent.

23 PROSPECTIVE JUROR: Well, you had discussed  
24 that -- the video that we watched earlier, talking about  
25 the patent system and the parts of it that are described

1 as a claim and he had mentioned that we needed to be fair  
2 in our decision, that a hundred percent of that would  
3 need to be accurate and I don't know that I would -- it  
4 was infringed upon -- I guess if it was 90 percent, I  
5 would have to vote that way. I don't think it would need  
6 to be a hundred percent. If someone stole someone's idea  
7 because -- they could get in on a little 10 percent part  
8 of it, I would have a problem with that.

9 THE COURT: Okay. Thank you.

10 MR. JONES: Thank you, your Honor.

11 THE COURT: All right. Thank you.

12 All right. Now we're going to take a recess  
13 and -- for the jury panel members, the lawyers have some  
14 business to conduct about the final selection of the  
15 eight jurors, which is going to take a little while; and  
16 the court reporters need a break as well. So, I would  
17 like the jurors to return at five minutes of 11:00; and I  
18 would like the lawyers to return in ten minutes. Does  
19 that give the court reporters enough of a break?

20 THE REPORTER: Yes, sir.

21 THE COURT: Thank you. So, we're adjourned  
22 for the jurors until five of 11:00; and the lawyers  
23 should be back in ten minutes.

24 (Recess, 10:24 a.m. to 10:37 a.m.)

25 (Open court, all parties present, prospective

1 jurors not present.)

2 THE COURT: We'll first address the cause  
3 issues; and then as the lawyers requested, I'll give you  
4 a break for a few minutes to consider the peremptory  
5 challenges.

6 So, I propose to excuse Jurors 16, 24, 25, and  
7 26 for cause. Is there any objection to that?

8 MR. ALBRITTON: We have no objection to those,  
9 your Honor.

10 THE COURT: Mr. Jones?

11 MR. JONES: We have no objection, your Honor.

12 THE COURT: Okay. Are there others that you  
13 believe should be excused for cause, Mr. Albritton?

14 MR. ALBRITTON: Yes, your Honor. I believe  
15 that we agree -- Intel and the plaintiff agree that  
16 Number 9 should likewise be stricken for cause.

17 THE COURT: Okay. Number 9 will be stricken  
18 for cause.

19 MR. ALBRITTON: And then, your Honor, we've  
20 got two additional that we think should be stricken for  
21 cause. Number 3 -- Juror Number 3 indicated that he was  
22 pretty sure his mutual fund owned Intel stock; and for  
23 that reason, we would move to strike 3 for cause.

24 And then Number 23 was not as firm on that  
25 point but believed that possibly her mutual -- let me see

1 if I can get the gender right here -- that her mutual  
2 fund likewise included Intel stock.

3 So, we would move on 3 and 23 as well, your  
4 Honor.

5 THE COURT: Mr. Jones?

6 MR. JONES: Your Honor, first with regard to  
7 the issue of Juror Number 9, we do agree to that.

8 With regard to issue number 3 -- with regard  
9 to Juror Number 3 and also Juror Number 23, I think their  
10 situations are both the same. I mean, my memory is not  
11 exact; but what they said is "Our mutual funds may own  
12 Intel stock. We don't" -- I think one of them may have  
13 said, "I think it does." Judge, that showed no influence  
14 that that would have upon them. There was no question  
15 asked them of "Will this in any way influence your  
16 decision?" They didn't intimate that it would, and I  
17 don't think there is any reason to excuse them for cause.

18 THE COURT: Well, I mean, with respect to  
19 judges, the fact that you own a mutual fund which  
20 includes a particular stock isn't grounds for recusal.  
21 I'm not sure why it should be any different for a juror.

22 What's your reaction to that, Mr. Albritton?

23 MR. ALBRITTON: Thank you, your Honor.

24 Well, of course, as the court knows, if they  
25 own stock outright, it would be an automatic

1 disqualifier.

2 THE COURT: Sure.

3 MR. ALBRITTON: And frankly, 23 is less  
4 problematic from our perspective than Number 3. The fact  
5 that Number 3 said that he was pretty sure that it owned  
6 stock, that would lead to a bias in favor of Intel. It's  
7 not just that there is -- as I understand it with  
8 judicial ethics -- and you would certainly know this  
9 better than I.

10 THE COURT: Yeah, I would.

11 MR. ALBRITTON: That's not the only thing you  
12 know better than I, I'm quite certain.

13 But it's -- you know, I think it's a slightly  
14 different situation because, of course, the judicial  
15 officers are well versed in all of these issues. We've  
16 got here a lay juror who's pretty certain or believes  
17 pretty firmly that his mutual fund has stock and  
18 therefore could believe that a verdict in this case could  
19 impact his mutual fund portfolio and for that reason we  
20 would ask -- we would move on 23. And I will withdraw my  
21 request as it relates to -- I'm sorry --

22 THE COURT: Other way around.

23 MR. ALBRITTON: Yes, sir. We withdraw on 23,  
24 and we urge on 3.

25 THE COURT: All right. I'll excuse 3 for

1 cause.

2 So, that would be 3, 9, 16, 24, 25, and 26.

3 Is there anybody -- any other for-cause  
4 issues?

5 MR. JONES: No, your Honor. Excuse me.

6 THE COURT: Okay. I want to mention that I  
7 propose to include one additional instruction as a result  
8 of the jury questioning in the preliminary instructions,  
9 and it would be this: The object of a damages award is  
10 to compensate, not to punish. You should not award  
11 increased damages because the patent was used without  
12 permission.

13 Is there any objection to that?

14 MR. ALBRITTON: Certainly not, your Honor.

15 MR. JONES: No, your Honor.

16 THE COURT: Okay. Anything else that we need  
17 to talk about before we adjourn so you can do your  
18 peremptories?

19 MR. ALBRITTON: Not on behalf of the  
20 plaintiff, your Honor.

21 THE COURT: How long do you need to do that?

22 MR. JONES: Could we have 15 minutes, your  
23 Honor?

24 THE COURT: Why don't you try to do it in ten  
25 because the jury is going to be coming back at five of,

1 and I'd like to do the preliminary instructions and the  
2 opening statements before we break for lunch. So, let's  
3 get it in ten minutes. Okay?

4 MR. JONES: Thank you, your Honor.

5 THE COURT: Okay.

6 (Recess, 10:42 a.m. to 10:55 a.m.)

7 (Open court, all parties present, prospective  
8 jurors not present.)

9 THE COURT: Before the jury comes back in, I  
10 just want to make sure that I've got these numbers right  
11 with the hardship excuses and the excuses for cause and  
12 the peremptories. The jurors that I have will be 1, 2,  
13 7, 12, 13, 17, 18, and 19.

14 Is that correct?

15 MR. ALBRITTON: I guess I'm a little bit  
16 confused. Number 4 wasn't -- I apologize, your Honor.  
17 Could you...

18 THE COURT: I have 1, 2, 7, 12, 13, 17, 18,  
19 and 19.

20 MR. ALBRITTON: Those -- I'm sorry. Those  
21 represent --

22 THE COURT: Those would be the jurors who  
23 would be seated. You may not know. I mean, this  
24 includes the peremptories.

25 MR. ALBRITTON: Yes, sir. I mean, the way I

1 had counted it based on when we left, we were striking  
2 through 20. And the ones that had previously been  
3 excused were 3, 5, 6, 9, 11, and 16, which were in the  
4 strike zone. Those are the ones that had been excused  
5 for either cause or --

6 THE COURT: I'm not sure what you're saying.  
7 Are you saying that Number 4 should be on the list?

8 MR. ALBRITTON: Yes, sir. What I understood  
9 was that the jurors from which we were striking were  
10 Number 1, Number 2, Number 4, Number 7, Number 8,  
11 Number 10, Number 12, Number 13, Number 14, Number 15,  
12 17, 18, 19, and 20, were the ones that we would be  
13 striking, considering that there were a total of six --

14 THE COURT: No, I'm not reading the ones that  
15 are on the list before the strikes. I'm reading the list  
16 after the strikes.

17 MR. ALBRITTON: Oh. I'm sorry.

18 THE COURT: All right. These are the eight  
19 jurors --

20 MR. ALBRITTON: Okay.

21 THE COURT: -- the ones that I listed.

22 MR. ALBRITTON: Okay.

23 THE COURT: Am I doing anything wrong?

24 MR. ALBRITTON: No, sir. You're right. I'm  
25 confused. What were those numbers one more time?

1 THE COURT: 1, 2, 7, 12, 13, 17, 18, and 19.

2 MR. JONES: Obviously I don't know their  
3 preliminary strikes; but I have no reason to believe  
4 that's incorrect, your Honor.

5 THE COURT: Okay.

6 MR. ALBRITTON: That appears -- the same, your  
7 Honor, yes.

8 THE COURT: All right. So, is the jury ready  
9 to come back in?

10 Let's bring them in.

11 (Prospective jurors enter the courtroom,  
12 10:59 a.m.)

13 THE COURT: Thank you very much, ladies and  
14 gentlemen. We worked hard with the lawyers on the jury  
15 selection while you were gone, and one of the effects of  
16 that work is that we have chosen the jury. And for those  
17 who are not selected, we very much appreciate the time  
18 that you have spent down here today.

19 And I just want to reiterate two points that I  
20 made earlier. One is that there is no reflection on you  
21 if you were not chosen. That's just part of the process.  
22 And the second is that regardless of whether you're  
23 chosen or not chosen, your service here today is  
24 extremely important and we're grateful, very grateful for  
25 your having participated in it and it's a very impressive

1 panel of jurors and we appreciate your coming here.

2 Now the time has come to select the jurors.

3 I'm going to read the numbers of the eight jurors who  
4 have been selected, and they should take their place in  
5 the jury box. Mr. Blanton will show you where to sit,  
6 and the rest of the jurors will be excused.

7 Juror Number 1, please stand and take your  
8 place in the jury box.

9 Juror Number 2, please stand and take your  
10 place in the jury box.

11 Next is Juror Number 7. Please stand and take  
12 your place in the jury box.

13 Juror Number 12, please stand and take your  
14 place in the jury box.

15 Juror Number 13, please stand and take your  
16 place in the jury box.

17 Juror Number 17, please stand and take your  
18 place in the jury box.

19 Juror Number 18, please stand and take your  
20 place in the jury box.

21 And Juror Number 19, please stand and take  
22 your place in the jury box.

23 Okay. Thank you.

24 Does counsel have any objections to the jury  
25 that's been selected?

1 MR. ALBRITTON: No, your Honor.

2 MR. JONES: No, your Honor.

3 THE COURT: Okay. Thank you very much.

4 All right. Well, for the remainder of the  
5 jurors who were not selected, again we thank you and your  
6 time has not been wasted today. This was a very smooth  
7 jury selection. Often we require many more than are  
8 ultimately selected and the court thanks you and you're  
9 free to go now.

10 (Remaining prospective jurors exit the  
11 courtroom, 11:03 a.m.)

12 THE COURT: Ms. Ferguson, would you administer  
13 the oath, please.

14 (The oath is administered to the jury.)

15 THE COURT: Now I'm going to begin with  
16 preliminary instructions, which is a brief description of  
17 the case and the law that governs. And then each side  
18 will have half an hour for opening statements in which  
19 they will describe their view of what the case is and  
20 then we'll adjourn for lunch for an hour and we will  
21 begin with the witness testimony immediately after lunch.

22 Now, you've been sworn in now as jurors in  
23 this case; and at the end of the trial it's going to be  
24 your job to decide the facts based on the evidence you  
25 heard and saw. I'll give you instructions on the law and

1 the procedure that you should follow in making your  
2 decision, but I don't decide the facts. That is your  
3 job.

4 The first phase of the trial, as I mentioned,  
5 will be the opening arguments in which the lawyers will  
6 preview the case and prepare you for the evidence which  
7 is the main phase of the trial. And then the witnesses  
8 will first be called by Stragent as part of its case and  
9 then Intel as the defendant being sued will present its  
10 case and after the Intel case is concluded, Stragent will  
11 have the opportunity to present rebuttal evidence. Then  
12 there will be closing arguments and final instructions,  
13 and then you will be asked to go and deliberate and reach  
14 a verdict and come back and tell us what the verdict is.

15 As I've mentioned, we hope to be able to  
16 conclude this by Friday; but we may have to ask you to  
17 come in on Saturday or even next week to conclude it.

18 As I've mentioned before and it has been  
19 mentioned several times, Stragent is the plaintiff.  
20 Intel is the defendant. This means that Stragent accuses  
21 Intel of infringing its patents. There are three patent  
22 claims that are involved here. I'll explain in a minute  
23 what a patent claim is.

24 Intel has offered two defenses. First it  
25 asserts it is not infringing Stragent's patents; that is,

1 that it does not come within the claims of the patent.  
2 And second, it asserts that the Stragent patent claims  
3 are invalid. And you're going to hear evidence about  
4 both issues, infringement and invalidity; and you're  
5 going to be asked to reach a verdict on both infringement  
6 and invalidity based on the evidence that you receive.

7 Now, what do I mean by "evidence"? The  
8 evidence in this case will consist of sworn testimony  
9 from live witnesses, deposition testimony -- that is,  
10 videotaped deposition testimony -- from witnesses who are  
11 unable to be here; written exhibits that are received  
12 into evidence; and stipulations reached by the lawyers  
13 for the parties.

14 The substitute for live witness testimony, the  
15 deposition testimony, should be treated exactly the same  
16 as live witness testimony. Exhibits are simply documents  
17 that the parties are introducing into evidence which you  
18 may consider. And a stipulation is a stipulation of fact  
19 agreed to by both sides. And if the parties have agreed  
20 that a fact is true, stipulated to it, you should accept  
21 it as true and think nothing more of it.

22 Now, one important last thing about evidence  
23 is the statements and the arguments that the lawyers make  
24 are not evidence; and this includes the opening and  
25 closing statements as well as any of the questions that

1 are made to the witnesses. The lawyers' statements are  
2 not evidence.

3 Now, evidence has to be admitted in order for  
4 you to consider it. When I mean "admitted into evidence"  
5 or "received into evidence," I mean that you may consider  
6 a particular statement or a particular exhibit in making  
7 a decision at the end of the case. And you may only  
8 consider the evidence that is admitted. Some evidence  
9 will be excluded by me, and you may not consider that.

10 Now, in addition to the evidence that is  
11 received, you may draw inferences from the facts that  
12 have been proven and reasonable inferences or conclusions  
13 are permissible.

14 From time to time during the trial, one or the  
15 other party may object to the introduction of evidence  
16 and I will rule on those objections and I will either say  
17 that the evidence should be admitted or not admitted.  
18 But you shouldn't infer by the rulings that I make that I  
19 have any opinions on the facts of the case or that I  
20 favor one side or the other. If I overrule an objection,  
21 I am permitting the evidence to be introduced; and you  
22 should not think anything of the fact that it was  
23 objected to. You shouldn't attribute any weight to that.  
24 It could be excluded for any number of reasons, and it is  
25 not your task to worry about that.

1 Sometimes I will allow evidence to be admitted  
2 only for a limited purpose and not others, and you should  
3 consider it only for the purpose that I allow it to be  
4 considered for. It's conceivable also that sometimes  
5 evidence might come in and then be stricken later. And  
6 if that happens, if the evidence is stricken, you also  
7 can't consider that evidence.

8 Now, during the trial it may be necessary for  
9 me to confer with the lawyers outside of your hearing, as  
10 I consulted with the lawyers in the process of jury  
11 selection. I will handle these matters as briefly and  
12 conveniently for you as I can, but they are a necessary  
13 part of the trial. And it's also my duty to warn or  
14 caution a lawyer who does something in open court in  
15 front of the jury that's not in keeping with the rules of  
16 evidence or procedures, and don't draw any evidence --  
17 any inference against a party if I have occasion to  
18 caution a lawyer during the trial.

19 Now, it's very important to keep an open mind  
20 during the trial. Don't decide any fact until you've  
21 heard all of the evidence, the closing arguments, and my  
22 instructions. At the end of the trial, as I mentioned,  
23 you'll recess and deliberate to make a decision based on  
24 the evidence that you've heard. The exhibits, the  
25 written documents that are introduced as exhibits, will

1 be available to you during deliberations; and even though  
2 the court reporters here are making a transcript of the  
3 trial, the witness testimony, that will not be available  
4 to you during the deliberations.

5 Now, it is possible for you to ask during your  
6 deliberations to have a limited portion of the testimony  
7 read back to you. It's difficult and time-consuming for  
8 the reporters to do that. So, the opportunity to have  
9 testimony read back is limited; and it is very important  
10 for that reason to pay very close attention to the  
11 testimony when it is given.

12 Now, until this case is over, you cannot  
13 discuss the case with anyone and you cannot allow anyone  
14 to discuss the case with you. This includes family and  
15 friends, the parties, the witnesses, the lawyers, anyone.  
16 And if anyone should try to discuss the case with you or  
17 approach you about the case, you should inform me  
18 immediately; and I'll take appropriate measures.

19 Now, don't even, in fact, discuss this case  
20 with your fellow jurors during the trial until you recess  
21 for the deliberations at the end of the trial. So, even  
22 with respect to fellow jurors, don't discuss the case  
23 until the end of the trial.

24 And it's particularly important that the trial  
25 lawyers are not allowed to speak with you during the

1 case. When you see them or pass them in the halls, in  
2 general they won't speak to you. They may say "good  
3 morning," which is okay; but they are not being rude in  
4 not having a broader conversation than that. That's  
5 simply my instructions to the lawyers. And you should  
6 not say anything to them, either, other than nodding and  
7 saying "good morning."

8           The lawyers are also not allowed to speak with  
9 you after the case is over except in exceptional  
10 circumstances, and they would have to secure permission  
11 from me to do that. You can speak to anyone else about  
12 the case when it's over, but you should not speak to the  
13 lawyers involved in the case unless I give permission.

14           Now, many of you undoubtedly use social  
15 networks such as *Facebook* or *Twitter*. Do not discuss,  
16 post updates of any kind regarding the trial of this case  
17 or your views about it. You can tell your friends and  
18 family about the case when it's over with.

19           Likewise, do not send any text messages or  
20 e-mails about the case or discuss it with anyone. I want  
21 you to leave your cell phones or any other electronic  
22 devices in the jury room during the trial, not to bring  
23 them into the courtroom. You may use them during lunch  
24 break or recesses to call your family, not to discuss the  
25 case but to say, you know, "I'll be home for dinner a

1 little bit late because the trial is going a little bit  
2 later." But do that in the jury room. Do not bring  
3 those electronic devices, please, into the courtroom.

4           You're also not allowed to do any research  
5 into any fact or issue related to the case. You  
6 shouldn't go on the Internet to learn more about the  
7 case, the parties, the lawyers, or patents. Do not watch  
8 or read any news accounts of the trial should you run  
9 across them. And the reason for all of this is that  
10 you're supposed to be guided by what you see and hear in  
11 the courtroom, and this is a very important part of our  
12 civil justice system. If two parties disagree, they can  
13 bring their dispute here and be assured that the jury is  
14 going to resolve it based on the evidence that is heard  
15 in court.

16           Now, we have juror notebooks for you; and I'm  
17 going to ask Ms. Ferguson to distribute to you the juror  
18 notebooks now. We'll pause for just a moment, and then  
19 I'll explain what is in the notebooks.

20           (Juror notebooks are distributed to the jury.)

21           THE COURT: Okay. You all have your  
22 notebooks. Let's just briefly go through what's in here.  
23 As I mentioned, there are two patents involved; and they  
24 are these long numbers. 6,848,072 is one patent. We'll  
25 refer to that and the parties will refer to that as the

1 "'072 patent."

2           There is the second patent which is the  
3 7,028,244 patent; and again for convenience, the lawyers  
4 and I will refer to that as the "'244 patent."

5           Now, there are only three claims of those  
6 patents that are at issue in the case; and if you look at  
7 the next tab, you will see something that's called "List  
8 of Asserted Claims and Court's Construction of Claim  
9 Terminology." The claims are in the left-hand column.  
10 There are three of them. The first one you see is  
11 claim 12, and there is claim 16. Those are both in the  
12 '072 patent. And then there is claim 1 of the  
13 '244 patent.

14           And you'll see in the right-hand column is the  
15 court's construction of various terms that appear in the  
16 patent. That's the process of what we call "claim  
17 construction" where the parties have urged their views of  
18 how the claim terms should be construed and the court has  
19 ruled on those constructions. And, so, you see in the  
20 right-hand column is the court's construction. So, there  
21 is the term "CRC circuit" is in the claim; and there is  
22 the court's construction. In other words, it's sort of  
23 like a dictionary that tells you what you should  
24 understand that particular term to mean in the patent.

25           And then there is the next item which is

1 glossary -- it says "Proposed Glossary of Patent Terms,"  
2 and that is to aid you also in understanding certain  
3 other patent terminology that is used here.

4           There is, following that, a list of the  
5 plaintiff's witnesses with pictures and a place for you  
6 to take notes about their testimony. And then the next  
7 one is defendant's witnesses. They will similarly supply  
8 pictures and sheets relating to their witnesses. You'll  
9 get that at the conclusion of the plaintiff's case.

10           And then there is a tab for jury questions.  
11 I'll explain that in a minute. And then there is --  
12 should be some note paper for you to take notes at the  
13 end of that.

14           And at the end of each day, you'll leave those  
15 notebooks with the court; and at the end of the trial,  
16 the notes that you keep will be destroyed.

17           Now, don't feel that you have to take notes.  
18 If you wish to take notes, there is a place for you to do  
19 it; but don't take so many notes about the testimony that  
20 you don't pay attention to what the witnesses are  
21 actually saying.

22           All right. Now -- I mentioned one of the tabs  
23 related to jury questions. Normally during trials only  
24 the lawyers are allowed to ask questions of the  
25 witnesses. However, in this case I'm going to ask you as

1 jurors to ask questions if you think it is necessary and  
2 appropriate. And the way this will work is to have a  
3 process so that the lawyers and I cannot tell which  
4 jurors are asking questions. If there is something that  
5 you would like to ask -- the questions will come at the  
6 end of each witness' testimony. And if there is a  
7 question you would like to have asked of that witness,  
8 you should write it down on a sheet and pass it to our  
9 courtroom deputy. And at the end of each witness'  
10 testimony, each of you should hand forward a sheet even  
11 if you don't have a question. And the reason for that is  
12 so that no one can tell who asked the question. So, you  
13 don't have to ask a question; but you should pass along a  
14 sheet even if you don't ask a question.

15           When you hand in the questions, I'll review  
16 them, if there are any; and I'll determine which ones  
17 should be asked. Now, don't be offended if I decide not  
18 to ask your question. There could be all sorts of  
19 reasons for that. Don't worry about it. If I do ask the  
20 question, I may reframe it to make it a little bit  
21 different.

22           And after I've asked the question to the  
23 witness or questions to the witness, then the lawyers may  
24 have an opportunity to ask a few follow-up questions.  
25 Now, as I said, don't feel compelled to ask questions;

1 but don't be afraid to ask a question if you think it's  
2 important and would be helpful.

3 Now, let's talk a little bit about patents.  
4 You've seen the video on the topic. As you probably know  
5 by now, patents are granted to individual inventors by  
6 the Patent and Trademark Office which is referred to in  
7 the course of the trial as the "PTO." And in order to  
8 get a patent, the inventor files an application with the  
9 PTO. Then there is someone called an "examiner" who is  
10 an expert in the field who reviews the patent application  
11 and decides ultimately whether a patent should be  
12 granted.

13 The patent allows its holder to prevent others  
14 from making, using, or selling the patented invention.  
15 The patent also prevents others from offering the  
16 patented invention for sale or importing it into the  
17 United States. And when somebody does one of those  
18 things without the patent owner's permission -- that is  
19 without a license from the patent owner. You'll hear  
20 about patent licenses during the course of the trial.  
21 When someone does that without permission, without a  
22 license, that's called "infringement." And the patent  
23 holder can enforce the patent against infringers by suing  
24 them in federal court, and that's what Stragent claims  
25 has happened here. They claim that Intel has infringed

1 the patent.

2 On the other hand, everyone has the right to  
3 use existing knowledge and principles. A patent cannot  
4 remove from the public the ability to use what was known  
5 or obvious before the invention was made or protection  
6 was sought. And if a patent issues that is invalid, you  
7 cannot sue to recover infringement damages. Not every  
8 patent that is granted by the Patent and Trademark Office  
9 is a valid patent, and part of your job is to determine  
10 whether the patent claims here are valid claims.

11 Now, the process of obtaining a patent is  
12 called "prosecution." To start the process, as I  
13 mentioned, the claimed inventor files an application.  
14 The examiners review the application. The application  
15 includes a part called the "specification" -- I'll show  
16 you in a few minutes what part of the patent is called  
17 the "specification" -- which contains a written  
18 description of the invention and tells what the invention  
19 is, how it works, how to make it and use it; and that's  
20 supposed to be done in full, clear, and exact terms so  
21 that others who are competitors can know what is covered  
22 by the patent.

23 And at the end of the patent, there are patent  
24 claims. Now, for each of these patents there are quite a  
25 large number of claims at the end of the patent. We're

1 only concerned with three of them; and those three are  
2 the ones that are in your book there, claims 12 and 16 of  
3 the '072 patent and claim 1 of the '244 patent. So,  
4 we're only dealing with three claims. You don't have to  
5 worry about the others.

6 Now, the invalidity issue relates to what's  
7 called "prior art." Prior art is defined by law -- at a  
8 later time I'll give you a specific instruction about  
9 what prior art. In general prior art includes earlier  
10 patents, things that existed before the claimed invention  
11 that were publicly known or used in this country or that  
12 were described in the printed publication.

13 Now, the examiners at the Patent Office  
14 consider prior art when they are determining whether to  
15 issue a patent and the examiner considers what's called  
16 "cited references" which are listed in the patent and  
17 those consist of prior references found by the examiner,  
18 him or herself, or that were found by the applicant and  
19 submitted to the PTO.

20 The process by which a patent is granted is a  
21 process that takes place only between the applicant and  
22 the patent examiner. It's what's called "*ex parte*."  
23 Competitors who might be affected by the patent are not  
24 part of that process. It's solely between the patent  
25 applicant and the examiner. And they go back and forth

1 for some time in deciding whether the patent should be  
2 granted, and the papers that are generated in the process  
3 of going back and forth to see what claims of the patent  
4 should be granted are called the "prosecution history."  
5 You'll hear about that prosecution history of the patent,  
6 the record of the process by which it was granted in the  
7 first place.

8           If the patent is granted, the claims define  
9 the boundaries of the protection, give notice to the  
10 public about these boundaries. The creation of a patent  
11 and granting of a patent by the PT0 does carry with it a  
12 presumption that the patent is valid. It's presumed that  
13 the subject matter of the patent is new, useful, and  
14 constitutes an advance that was not at the time of the  
15 invention obvious to one of ordinary skill in the art.  
16 In other words, the examiner has concluded that this is a  
17 valid patent.

18           But as I mentioned earlier, just because the  
19 examiner or the PT0 decides that a patent should be  
20 issued and is valid doesn't necessarily mean that this  
21 was correct, that an invention claimed in the patent was,  
22 in fact, legally entitled to protection. One or more of  
23 the claims, in fact, maybe should not have been issued  
24 and they are not valid claims.

25           A person accused of infringement has the right

1 to argue here in federal court that a claimed invention  
2 of the patent is not entitled to patent protection  
3 because it does not meet the requirements for a patent.  
4 In other words, an accused infringer may defend a suit  
5 for patent infringement on the grounds that the patent  
6 claim is invalid.

7 Here Intel asserts that the three claims that  
8 are before us are not valid, and it is your job to  
9 consider the evidence presented by the parties and  
10 determine whether Intel has proven that the claims are  
11 not valid. And it has to do that by clear and convincing  
12 evidence.

13 Now, to help you follow the evidence, I'm  
14 going to give you a brief summary of the positions of the  
15 parties. The case involves those two patents, the  
16 '072 patent and the '244 patent obtained by Walter  
17 Milliken; and they have been obtained by Stragent through  
18 a series of transactions that were referenced earlier in  
19 the course of the jury selection.

20 Stragent alleges that Intel has infringed  
21 claims 12 and 16. These are what are called "product  
22 claims." They are claims to a product. They've  
23 infringed by making, using, selling or offering to sell  
24 and importing products that include all of the  
25 requirements of those claims.

1 Stragent also contends that Intel has  
2 infringed claim 1 of the '244 patent. That is not a  
3 product claim; that is called a "method claim." It's a  
4 method which can be patented as well as a product.

5 And as I mentioned before, Intel asserts that  
6 each of these three claims that are before us are  
7 invalid. And you must decide, as part of your task,  
8 whether these three claims have been infringed and  
9 whether they are valid or invalid claims.

10 Now, if you decide that any asserted claim has  
11 been infringed and is not invalid, you will then need to  
12 decide any money damages to be awarded to Stragent to  
13 compensate for that infringement. And it's important to  
14 understand that the object of the damages award if you  
15 find infringement is not to punish. It's to compensate.  
16 It's not punishment. And you should not award any  
17 increased damages, if you find any, just because the  
18 patent was used without permission. The same royalty --  
19 reasonable royalty that we're trying to determine would  
20 be paid whether the patent was used with permission or  
21 without permission.

22 Now, we've been through the jury notebooks;  
23 but I'd like to just focus you for a moment on the  
24 '072 patent just to explain to you a little bit what the  
25 patent looks like. You'll see the patent number if you

1 look at the first page here. There is the date that the  
2 patent issued which is January 25th, 2005. The inventor  
3 is Walter Clark Milliken. You see that over on the  
4 left-hand side. And then there is the initial assignee  
5 which was BBN Solutions. As I mentioned, it is now owned  
6 by Stragent.

7 And then there is an Abstract on the front  
8 page there. That's a brief discussion of what the patent  
9 is, a brief statement of what the patent is. And there  
10 are various figures, figures in the first part of the  
11 patent which set forth information relevant to the  
12 invention. And then what I mentioned as the  
13 "specification" begins right after the figures. You see  
14 these various columns which are numbered here, and the  
15 line numbers in the specification are numbered for ease  
16 of reference.

17 And then at the end in Column 6 begins these  
18 list of claims, and for this patent you only need to  
19 focus on the claims that are numbered 12 and 16.

20 Now, the claims of the patent are the main  
21 focus in this trial because, as I mentioned before, the  
22 claims are what define the patent owner's rights under  
23 the law; that is, the claims define what the patent owner  
24 may exclude others from doing during the term of the  
25 patent; and the claims of a patent in this respect serve

1 two purposes. They define the boundaries of what the  
2 invention covers, and they provide notice to other people  
3 of what's covered by the claims.

4 When a patent or method is accused of  
5 infringement as here, what you do is compare the accused  
6 product or method to determine whether there is  
7 infringement; and that's determined by looking at the  
8 claims and the claim language and the court's  
9 construction of the claim terms and compare those to the  
10 accused products or method.

11 And the claims are also important in deciding  
12 whether the patent is invalid; and, so, for both purposes  
13 of infringement and invalidity, you'll be looking at the  
14 claims and the interpretations that have been given to  
15 the claims.

16 When the claims come up, as I mentioned  
17 earlier, they may be -- the parties may have different  
18 interpretations of them. The interpretations of the  
19 claims is a matter for the court and as I mentioned, the  
20 court has provided constructions of disputed claim  
21 terminology here and you have in your books the  
22 construction that the court has given to those claims.  
23 And the parties and their experts are required to use  
24 those constructions when presenting evidence, and you  
25 must also accept and apply them when you decide the

1 issues of infringement and invalidity.

2 Now I'm going to talk to you a little bit  
3 about the burden of proof. The burden of proof says  
4 which side has the burden and what the burden is to  
5 convince you of infringement or invalidity. The standard  
6 of proof tells you how strong the evidence has to be to  
7 persuade you. And in this case the burdens of proof are  
8 different depending on the issue.

9 First, Stragent, being the patent holder and  
10 plaintiff, has the burden of proving that Intel has  
11 infringed the patents; and it has to do so by what's  
12 called a "preponderance of the evidence" and that means  
13 it has to show that it was more probable than not that  
14 Intel infringes. If you think that the evidence of  
15 infringement is evenly balanced, Intel wins. On the  
16 other hand, if you think that the evidence favors  
17 infringement, then Stragent wins on that issue. And  
18 Stragent also bears the burden of proving damages on  
19 infringement by a preponderance of the evidence.

20 Now, on the other hand, a different standard  
21 of proof applies to invalidity; and that's, as I  
22 mentioned earlier, the clear and convincing evidence  
23 standard. That's a higher burden of proof to prove  
24 invalidity. And clear and convincing evidence is  
25 evidence that produces in your mind a firm belief or

1 conviction that the claim or defense has been proven.  
2 Clear and convincing evidence, while higher than  
3 preponderance of the evidence, is not as high as the  
4 beyond a reasonable doubt standard that is used in  
5 criminal cases. And in deciding whether the burden of  
6 proof has been satisfied, you must consider all of the  
7 evidence presented by both sides.

8           Now, a final matter. I need to emphasize to  
9 you that violating the court's instructions that I give  
10 you would be a very serious matter. As you can imagine,  
11 a great deal of time, effort, and money has gone into  
12 getting this case ready for trial and to trying it fairly  
13 and impartially before you. If you were to violate the  
14 court's instructions, it could place all of that work in  
15 jeopardy; and we might have to go back and do it all over  
16 again. So, please follow my instructions to the best of  
17 your ability.

18           Now, that concludes my preliminary  
19 instructions. We're now going to have opening  
20 statements. But before we do that, I just wanted to ask  
21 Mr. Albritton and Mr. Campbell if there are any  
22 objections to the instructions that the court has given.

23           MR. ALBRITTON: No, your Honor.

24           MR. CAMPBELL: No, your Honor.

25           THE COURT: Okay. Thank you.

1 So, Mr. Albritton --

2 MR. ALBRITTON: Your Honor, we would like to  
3 invoke the rule of witnesses.

4 THE COURT: Yes.

5 MR. ALBRITTON: Thank you.

6 THE COURT: And what that means is that  
7 witnesses who are going to testify in the case should not  
8 sit in the courtroom before their testimony and they  
9 should not discuss with anyone the testimony that was  
10 given by other witnesses before they took the stand, with  
11 the exception of expert witnesses.

12 MR. ALBRITTON: Yes, sir. And company  
13 representatives as well.

14 THE COURT: And company representatives.

15 MR. ALBRITTON: Thank you very much, your  
16 Honor.

17 THE COURT: Thank you.

18 Mr. Albritton, you can go first.

19 MR. ALBRITTON: Thank you very much, your  
20 Honor.

21 May it please the court, counsel.

22 Good morning. I want to tell you first off  
23 thank you very much. Thank you on behalf of myself and  
24 on behalf of Stragent and its owners, Kevin Zilka and  
25 Leslie Novy and Jason Player, and also on behalf of Barry

1 Bumgardner and Jaime Olin. We appreciate this. We  
2 understand that this is inconvenient. It's the week of  
3 spring break; so, I understand there are probably places  
4 lots of you would rather be than here and we appreciate  
5 you coming.

6 I agree wholeheartedly with my friend Mike  
7 Jones. This is a very important case. It's a very  
8 important case to my client as well as to Intel.

9 Ladies and gentlemen, what you're going to  
10 learn is that Walter Milliken was working at a company  
11 called BBN Technologies and Walter Milliken invented a  
12 fast and flexible way for computer chips, for processors  
13 to do CRC error detection. Walter Milliken is the first  
14 person in the world who came up with the idea that you  
15 should use two CRC circuits, each with its own hardwired  
16 polynomial and an instruction.

17 Intel, ladies and gentlemen, is using these  
18 patents, these patents right here which were granted by  
19 the United States Patent and Trademark Office that cover  
20 Mr. Milliken's inventions.

21 Intel is using these patented inventions  
22 without permission, and it's doing so by selling server  
23 processors that offer the ability to use what they call  
24 "rolling 16-bit CRC error detection."

25 I want to take you back in time. I want to

1 take you back to the summer of 2000. Walter Milliken was  
2 working for a company called "BBN." BBN is a company  
3 that is located in Cambridge, Massachusetts, and some of  
4 our country's very brightest people work there and they  
5 work to solve some of the world's most complicated  
6 problems. BBN, you're going to learn, has a long and  
7 storied history. BBN is the subject of a book called  
8 "Where Wizards Work [sic] Late." "Where Wizards  
9 Work [sic] Late" talks about the invention of the  
10 ARPANET, which we now know today as the Internet.

11 BBN's contributions to our country's  
12 technology is so significant that just last year, in  
13 2013, it received our nation's highest honor, the  
14 National Medal of Technology and Innovation.

15 So, what's going on in 2000? Walter Milliken  
16 and his colleagues at BBN started to work on a device, an  
17 Internet router. And what an Internet router is, it's a  
18 device that sends data over from one computer to the  
19 next. Well, one of the problems you have with an  
20 Internet router is that when data goes back and forth, it  
21 can get corrupted. There can be errors. That exact same  
22 problem happens not just over from computer to computer  
23 but also inside computers, when one processor is talking  
24 to another processor.

25 Walter Milliken invented this technology. The

1 Patent Office gave these two patents we're here about  
2 today; and Stragent, a small company over in Longview,  
3 owns them. The router that Mr. Milliken and his  
4 colleagues were working on was extremely sophisticated.  
5 There was nothing like it in the entire world. And when  
6 Mr. Milliken and his colleagues sat down to work on this  
7 project, he pretty quickly discovered that there was not  
8 any processor on the market that would do what he needed.

9           Now, some of you are sophisticated with  
10 computers more than others. But a processor is also  
11 called a "CPU." A processor or a CPU, it's the brains.  
12 It's the brains of many types of electronic devices,  
13 whether it be a server, your desktop computer at home, or  
14 a laptop computer.

15           But the processor that Mr. Milliken went out  
16 to design was -- and that he invented was a processor  
17 that could work in many types of devices. This project  
18 originally was an Internet router project, but he came up  
19 with a invention that applies to and is used by many  
20 different types of processor technology.

21           So, the first thing I need to talk to you  
22 about -- and his Honor mentioned it, and I have to  
23 confess I practiced it -- it's about cyclic redundancy  
24 checks.

25           Now, I'm pretty sure that none of y'all talk

1 about cyclic redundancy checks in your everyday life. I  
2 certainly do not. Well, cyclic redundancy checks is a  
3 particular way of doing this, are what this case is  
4 about. We're going to refer to it as "CRC" so we don't  
5 have to spit out the whole phrase every time.

6           What Mr. Milliken invented and was the first  
7 one in the world to invent was the idea, a better way, a  
8 faster and more flexible way to do CRC error detection.  
9 He decided that you needed to use two hardwired -- I'm  
10 sorry -- two separate CRC circuits, each with its own  
11 hardwired polynomial. Now, a polynomial is -- that's  
12 what's used to do the mathematical computations -- with  
13 an instruction as to which circuit to use. The first  
14 person. And the United States Patent and Trademark  
15 Office awarded these two patents that cover those  
16 important inventions.

17           In today's world, more so than in the past,  
18 you've got lots of data going back and forth. One way,  
19 of course, is data going between one group of computers  
20 and another group of computers like in the context of the  
21 Internet. But what you also have is you have data going  
22 between individual processors in large server systems.  
23 Now, a server, as you may know, it's just a group of big  
24 computers that have got lots of different processors that  
25 talk to each other and store enormous amounts of data,

1 important data, data that relates to our everyday lives.

2 Let me give an example. I live in Longview  
3 and I bank at BancorpSouth and I actually do online  
4 banking. So, when I log in to do my online banking, my  
5 computer is talking to the servers in Tupelo,  
6 Mississippi. Okay? Those servers are -- you have  
7 processors among those servers talking to each other,  
8 sending data back and forth and also data is being sent  
9 to me. And there is a chance that you can start getting  
10 mistakes, and those can have real consequences in your  
11 lives.

12 For instance, you go and you deposit a  
13 500-dollar check into your bank account. Corrupted data  
14 can make that deposit show up as a 50-dollar deposit.  
15 So, it's important, ladies and gentlemen, that you have  
16 CRC error detection that works fast and that is flexible  
17 to prevent against those problems.

18 Intel, ladies and gentlemen, their processors,  
19 the processors that are used in servers that are in issue  
20 in this case, send that data back and forth; and they use  
21 Walter Milliken's inventions to check for and detect  
22 those errors and they do it by using -- and I want you to  
23 make note of this -- by using something -- by offering  
24 something called "rolling 16-bit CRC."

25 What you're going to learn during the course

1 of the trial, ladies and gentlemen, is you can do 8-bit  
2 CRC and you can do what's called "rolling 16-bit CRC."  
3 By using the inventions of -- these inventions, Intel can  
4 make and sell processors that can do both. It gives  
5 flexibility to the customers. And that's important  
6 because there is a trade-off. 16 bit is more safe -- it  
7 detects more errors -- whereas 8 is slightly faster. And  
8 by using these patents, ladies and gentlemen, Intel gives  
9 its customers the ability to determine which is more  
10 important for their particular needs.

11 I want to walk you through a timeline of some  
12 important events just to put the whole case in context.  
13 What you're going to learn is that there was this project  
14 at BBN called an "iRouter project," and it started in the  
15 summer of 2000. Then in September of 2000, Walter  
16 Milliken and BBN filed a provisional patent application,  
17 which is the type of patent application allowed by the  
18 Patent Office rules and by the law. It's a more -- a  
19 smaller version. They then filed the ultimate -- the  
20 patent application, the full one, in September of 2001.  
21 And there are two patents, but I'm going to talk about  
22 one just for simplicity's sake.

23 It was filed in September of 2001. In  
24 January, 2005, the United States Patent and Trademark  
25 Office issued that '072 patent.

1 Fast-forward a number of years. BBN then  
2 sells those patents to Stragent, which is the plaintiff  
3 in this case, and is helping BBN get due compensation for  
4 the infringement by Intel.

5 And then you're going to see, lo and behold,  
6 years later -- what are we talking, four years or better  
7 after the patent issued -- Intel starts selling products,  
8 making money using the patents that were invented by  
9 Walter Milliken.

10 What I've done -- and I hope that the other  
11 side does this as well -- is I've put up on the screen  
12 exactly what you have in your juror notebook. The only  
13 difference is you see that number "1," "2," "3," and "4."  
14 I added those, just so we can see that there are four  
15 elements of this claim.

16 As I told you, there are more than one claim  
17 involved; but I'm going to focus on claim 16. What's  
18 important about this is his Honor told you in very clear  
19 terms this patent claim defines the scope of the  
20 invention. So, what you have to do, ladies and  
21 gentlemen, is go through and decide does each of these  
22 elements -- the Number 1, the Number 2, the Number 3, and  
23 the Number 4 -- do they show up in Intel's products. And  
24 if they do, that means there is infringement.

25 But there is something else very, very

1 important on this chart; and it's the hard work of his  
2 Honor, Judge Dyk. It's the court's constructions.  
3 Because some of those words don't have meaning to lay  
4 folks like you and me. And, so, his Honor says that  
5 these words have special meaning; and they have to be  
6 applied by me, by Mr. Campbell, and by you.

7           If you notice, one other thing, here at the  
8 top it says "a device comprising." That's what we're  
9 here to talk about, ladies and gentlemen. The device at  
10 issue in this case is Intel's server processors. It's  
11 not a specific -- and this claim applies to lots of  
12 different types of processors so long as they have  
13 elements 1, 2, 3, and 4.

14           Now, you heard this invention originally came  
15 out of a project that dealt with an Internet router.  
16 This invention is not limited to any specific type of  
17 processor like a network processor, for instance. And if  
18 anybody suggests that to you, that's just wrong because  
19 if you read this, ladies and gentlemen, the word "network  
20 processor" shows up nowhere in that claim.

21           This claim is to a device, and the device at  
22 issue in this case are the Intel server processors  
23 because you will see the Intel server processors have  
24 each of those four elements.

25           Now, how are we going to go about, ladies and

1 gentlemen, proving this to you? Because that's my burden  
2 and I accept it very enthusiastically. What we're going  
3 to do is we're going to call an expert by the name of  
4 Dr. Harold Stone. Dr. Stone has spent literally hundreds  
5 of hours pouring over the patents in this case and the  
6 related documents and, importantly, Intel's own secret  
7 internal documents, both its written documents but also  
8 something called "source code." Source code is the  
9 secret sauce. It's the computer code that's used to make  
10 these chips.

11 And what you're going to hear is that  
12 ultimately what's at issue is the chips that are sold,  
13 but also when they are made they are made into something  
14 called a "wafer." A wafer has got the individual  
15 circuits on them. They then cut those chips up, package  
16 them, and sell them. The dye, the little circuitry on  
17 the wafers and the chips infringe, the final package  
18 chips. And Dr. Stone is going to walk you through it  
19 specifically by showing you Intel document after Intel  
20 document and by showing you Intel code after Intel code.

21 It's going to be important -- and I ask you to  
22 consider it. Listen to what Dr. Stone says but also  
23 listen to his experience because that's going to help you  
24 decide is this a man who knows about these issues. And I  
25 ask you to do the same thing with respect to Intel's

1 witnesses.

2           What you're going to learn about Dr. Stone is  
3 he has a PhD in electrical engineering. He's been a  
4 professor of computer science and electrical engineering.  
5 He's an author. In fact, you're going to see this book  
6 right here (demonstrating). Chapter 5 is a chapter  
7 specifically about error detection and error coding.

8           This book (demonstrating), another book  
9 written by Dr. Stone, deals with the design of  
10 processors, the very issues that this case is about.

11           Dr. Stone is going to rely on this document in  
12 part. It's an Intel top-secret document that talks about  
13 the accused products. And he's going to walk you through  
14 pages, and I'm just going to give you some examples.  
15 This is a page that shows two CRC circuits. This is a  
16 page that talks about the demultiplexer of the -- another  
17 page that talks about the demultiplexer.

18           This one talks about that fourth limitation,  
19 parallel decomposition.

20           And what you're going to see, ladies and  
21 gentlemen, by looking at the documents Dr. Stone shows  
22 you and the code, internal Intel code, I respectfully  
23 suggest to you that you're going to conclude that element  
24 1, element 2, element 3, and element 4 are in the devices  
25 at issue in this case, the Intel server processors as

1 included on those wafers when they are made and then in  
2 those final package chips as they are sold. What this  
3 means, ladies and gentlemen, is that Intel infringes.

4 Next we're going to call an expert named  
5 Dr. Chris Vellturo. Dr. Vellturo is a damages expert.  
6 He's an expert economist. Dr. Vellturo is highly  
7 regarded and, in fact, you're going to learn has worked  
8 as an expert for these folks (indicating). He previously  
9 worked as an expert for Intel.

10 Dr. Vellturo is going to go through the  
11 internal documents of Intel and he's going to talk about  
12 them and he's going to talk about them in the context of  
13 his experience.

14 This is a document, for instance, he's going  
15 to show you, ladies and gentlemen. Remember the chips  
16 involved here have rolling 16-bit CRC. Okay? And they  
17 do that because they've got two CRC circuits, each with  
18 its hardwired polynomial and an instruction. This  
19 document is an internal Intel document that talks about  
20 some features that they call "RAS," R-A-S. Those are  
21 real important features in server process. This document  
22 shows you that the third most important, Number 3 out of  
23 19, is actually the rolling 16-bit CRC.

24 Dr. Vellturo is going to also go through and  
25 he's going to look at some prior agreements between

1 Stragent, the company that owns these patents, and two  
2 companies that used to -- that infringe. Those two  
3 companies have entered into license agreements. Now,  
4 they were sued, okay, much like Intel is sued in this  
5 case. They ultimately settled and took responsibility  
6 for their actions, and they paid money for their  
7 previous use and for all of their expected future use.  
8 Dr. Vellturo -- that's an amount of money, revenue, for  
9 their past infringement and their expecting future use.

10 Dr. Vellturo relied on that and says that --  
11 and you'll see it comes out to about a little over  
12 1 percent to about 2 percent is what those other two  
13 companies paid. And, so, Dr. Vellturo has taken that,  
14 and he's going to tell you in this case that for every  
15 dollar -- this is a hundred pennies -- every dollar that  
16 Intel makes selling chips that are made or sold in the  
17 United States that use these patents that came from BBN  
18 and Mr. Milliken, one penny of it should go to extra and  
19 then to BBN.

20 And, so, what does Intel say about that?  
21 Well, ladies and gentlemen, if you take 1 percent -- or  
22 it's actually slightly more, 1.18 -- and you multiply  
23 that by how much money Intel has made, it's a lot of  
24 money. Intel, you're going to hear -- it's agreed to by  
25 the parties -- in a little over 2 years Intel has made

1 \$3.5 billion selling computer chips that use these  
2 patents. That's not all the computer chips they sell.  
3 Those are only the ones that use BBN -- these BBN  
4 patents.

5           You're also going to learn that their profit  
6 margin on these particular profits is about double the  
7 profit margin on their product line as a whole,  
8 57 percent. That means 57 cents out of every dollar  
9 they're putting into their pocket as profit. It's almost  
10 \$2 billion.

11           1.8 percent of that, it's a lot of money.  
12 It's about \$37 million. Okay? That's what Dr. Vellturo  
13 opines is appropriate in this case.

14           So, where are we? You're going to learn, now,  
15 that is more money than those two other companies paid.  
16 Now, it's the same percentage, remember. One of those  
17 companies paid 1.8 percent and the other paid  
18 1.9 percent. So, Dr. Vellturo is using the lower of the  
19 two and the same percentage; but it's more money. And  
20 the reason it's more money, ladies and gentlemen, is  
21 illustrated right here on the board. If you add up the  
22 past revenue and the future revenue of those other two  
23 companies that use these patents, it comes up to about  
24 \$53 million.

25           Look at that in comparison to what Intel has

1 made by selling chips that use these BBN patents. That's  
2 the reason that even if you apply the same percentage,  
3 it's more money.

4 Now, I want to talk to you about what Intel is  
5 going to say because it's quite interesting. Intel's  
6 first line of defense is going to be "We don't use these  
7 patents. We just don't infringe them." That's what they  
8 say first and foremost.

9 They're going to call Dr. Harry Bims.  
10 Dr. Bims is going to come in, and he's going to talk to  
11 you about these claims just like I have. And I expect  
12 the other side will show you something like this. And  
13 he's going to come in; and he's going to basically admit,  
14 ladies and gentlemen -- really not basically. He's going  
15 to admit that these first two claims are in fact --  
16 elements, excuse me -- are, in fact, in the Intel  
17 products. Okay?

18 This is straight out of his report. It's an  
19 admission that these first two claim limitations or these  
20 two elements are present. They're not going to fuss  
21 about Number 4 either. So, all they're really going to  
22 do is they're going to fuss about Number 3. It's an  
23 element that requires a demultiplexer for receiving  
24 instructions.

25 Dr. Bims is going to have some very

1   hypertechnical excuses about this. Okay? He's basically  
2   on some level going to say that this computer, these  
3   processors, don't have instructions. That's what it's  
4   going to base down to. They want you to effectively  
5   believe that these computers, these computer chips know  
6   what to do without it being instructed to do so. That  
7   just doesn't make any sense. Computers can only do what  
8   we tell them to do; and the evidence is going to show you  
9   the software -- the code and the documents, that there  
10   are instructions that tell these chips which CRC  
11   circuit -- the first, second -- which one to use, whether  
12   to use one or both. That means there is infringement,  
13   ladies and gentlemen.

14               Now, Intel doesn't stop there. Okay? So,  
15   their first line of defense is with "We don't use it.  
16   There is no infringement." They want to hedge their bets  
17   a bit; and they said, "Well, if you decide that we use  
18   it, it's really okay because these patents are invalid.  
19   They're no good."

20               So, they want to hedge their bets, ladies and  
21   gentlemen; and they're going to call you two separate  
22   experts, Dr. Bims and a fellow from England named  
23   Dr. Gavin Stark. Okay? And they're going to testify  
24   about two separate pieces of prior art, two separate  
25   products. They don't talk about the same thing. I think

1 you're going to figure out why. They don't really agree  
2 on some fairly important things. But they're going to  
3 call these two different people. And what I want you to  
4 pay attention to, ladies and gentlemen, is that it's  
5 these four products only that they say are exactly the  
6 same as this patent claim. Only four. They do not rely  
7 on any patents, ladies and gentlemen, to say that this  
8 claim or any of our claims are anticipated, not a single  
9 patent, only these four products.

10 I want you to also listen carefully to their  
11 background, like I said, because sometimes things might  
12 not appear exactly as they are. So, they're going to  
13 call Dr. Stark, as I told you. Dr. Stark is going to  
14 testify about one of those products -- it's called  
15 "Hydrogen" -- and a related product called "Monsoon."  
16 Well, what you're going to learn is that Dr. Stark worked  
17 for a company called "Basis Communications" when he  
18 developed that. Intel purchased Basis, his former  
19 company, for hundreds of millions of dollars. And  
20 Dr. Stark personally made \$25 million off that  
21 transaction.

22 You're also going to hear that Dr. Stark  
23 stayed on at Intel and worked for Intel; and you're even  
24 going to find out that today as we are in Tyler, Texas,  
25 on the Monday morning of spring break, that the company

1 he works for now still has an important business  
2 relationship with Intel. What you're going to learn,  
3 ladies and gentlemen, and what I would suggest to you is  
4 you've got to take that into consideration when you  
5 listen to his testimony.

6 Now, what's important and I want to point out  
7 to you is this. Remember this chart that's in your  
8 binder that I've reproduced for you? You have to go  
9 through and you have to say, well, these four products  
10 that these expert witnesses are relying on, do they have  
11 all the same things as the BBN patents? Because if they  
12 don't, that means they don't invalidate by anticipation.

13 Well, his Honor gives us an extremely  
14 important definition. It's in these first two elements,  
15 a first CRC circuit and a second CRC circuit. What his  
16 Honor tells you and that we're all bound to apply is that  
17 those are "separate circuits that do not share an output  
18 register or a feedback path."

19 What that means, folks, of course, is if it  
20 shares an output path or a feedback register, even if  
21 it's got two polynomials, it is one circuit. If it is  
22 one circuit, if those four prior products only have one  
23 circuit, they do not invalidate this claim.

24 I don't think Intel is going to get up here  
25 and show this to you here in a couple of minutes because

1 it's devastating to their case.

2 This is just a simple drawing that Dr. Stone  
3 made and what you'll see here on the left is Hydrogen,  
4 Dr. Stark's product. It's got one residue register, and  
5 then you see this line that goes out of the bottom where  
6 it says "residue register" and goes up to the top -- to  
7 the two yellow boxes. That's a feedback path. Shared  
8 feedback, one shared register. It is different than the  
9 BBN inventions that you have two separate circuits  
10 because they have -- each circuit has its own polynomial,  
11 its own register, and its own feedback.

12 Ladies and gentlemen, Intel will go even a  
13 little farther. They want to hedge their bets one more  
14 time. They say, "Well, okay. If we actually do use this  
15 patent and if it is valid, well, it's just not very good.  
16 It's junk. We shouldn't have to pay much for it."  
17 They're going to call their very own expert, Mary  
18 Woodford, who is going to come in here and say that Intel  
19 should have to only pay \$350,000.

20 Ladies and gentlemen, that is 0.01. That's  
21 one one-hundredth of a percent.

22 Despite the fact these other companies paid  
23 1 percent and up to 2 percent, she says one one-hundredth  
24 of a percent.

25 It makes no sense because one of those

1 companies, the one that paid the 1.18, made -- Intel has  
2 made 90 times more money than that company made in the  
3 past and expected to make in the future. It is  
4 unreasonable, ladies and gentlemen.

5 Ms. Woodford is also going to come in and say,  
6 "Well, if Intel had known about these patents, they could  
7 have adopted a non-infringing alternative." Her opinions  
8 are going to depend on that. And she says if they had  
9 known -- well, that's real important, ladies and  
10 gentlemen, because what you're going to hear is that in  
11 November of 2000 they were aware of these patents.

12 Here is a letter to the vice-president and the  
13 general counsel that draws these very two patents to  
14 issue. In fact, you're going to hear -- Intel looked at  
15 these patents and you're going to hear this deposition  
16 today that says, "Yeah, we got these patents back in 2007  
17 and we looked at them, but we don't know what our  
18 conclusion was as to whether or not there was any  
19 infringement." Ladies and gentlemen, that doesn't make a  
20 lick of sense.

21 And, so, what do they do? They turn around  
22 and write us a letter and they say, "Thanks but no  
23 thanks. We looked at the patents but thanks but no  
24 thanks." And that's it.

25 At the end of the case, ladies and gentlemen,

1 I ask you to please conclude what I think and I suggest  
2 to you is appropriate, that Intel's server processors  
3 with rolling 16-bit CRC use these two United States  
4 patents, that the Patent Office -- that these patents  
5 are, in fact, valid and that Intel should pay its due.  
6 It should pay what other folks have done and that is  
7 1.18 percent of all the money it's made, the billions,  
8 the three and a half billion dollars it's made by using  
9 this invention.

10 Thank you very much.

11 THE COURT: Okay. Mr. Campbell.

12 MR. CAMPBELL: Good afternoon, instead of  
13 "good morning." My name is Chad Campbell. It's a  
14 pleasure to be here speaking for Intel today. On behalf  
15 of the many men and women that make up that company, we  
16 thank you for your service. We appreciate the time and  
17 the attention that you're going to give, and we expect to  
18 do our very best to provide some education and hopefully  
19 some points of interest along the way.

20 I'm going to divide my remarks today into  
21 three topics that the evidence later in the week, when we  
22 get to present our case, will detail.

23 The first point is an introduction to Intel  
24 and its history of innovation. You heard a little bit  
25 during *voir dire* about Intel, but I'd like to introduce

1 you to a little bit more. Intel pioneered the  
2 microprocessor and over the course of time has been  
3 successful in developing that technology and bringing  
4 about changes in computing.

5 Now, the particular microprocessors that are  
6 at issue in this case were developed independently by  
7 Intel. Mr. Milliken, BBN, and these patents didn't have  
8 anything to do with that. We'll show you why.

9 The second point I'll cover today has to do  
10 with invalidity. I'd like to introduce you to some  
11 evidence that explains why even though the Patent Office  
12 issued these patents, they didn't have the full story.  
13 I'm going to introduce you to some network processor  
14 engineers who actually built products before Mr. Milliken  
15 started doing his work that had the same idea. And  
16 because you have to be first to have a valid patent, as  
17 his Honor instructed earlier and will instruct later,  
18 those prior art products render the patents invalid.

19 My third point today is going to talk about  
20 non-infringement. We'll discuss the reasons why there  
21 are differences between the patents that Stragent now  
22 owns and the technology that Intel is using on these  
23 particular products. The Stragent patents are about  
24 network processors, and network processors move data  
25 around the Internet. They are specialized to do that.

1 The rolling 16-bit CRC technology isn't for moving data  
2 around on the Internet. It's about something very  
3 specific and different, and those differences lead to the  
4 reasons for non-infringement.

5 So, let me begin. Intel changed the face of  
6 computing. In the 1970s computers used to be quite big.  
7 They would take up a whole room. Today the same  
8 processing technology is available in a laptop that we  
9 can hold in our hands and on our lap. A big reason for  
10 that improvement has to do with developments in  
11 microprocessor technology that Intel has led.

12 Intel pioneered the microprocessor in 1971;  
13 and through the course of time, by improving that  
14 technology, it has actually been recognized for its  
15 contributions to our country, our economy, and our  
16 well-being. In fact, three times our nation's president,  
17 Presidents Reagan and both of the President Bushes,  
18 awarded Intel the National Medal of Technology. The  
19 Patent Office has awarded Intel 20,000 patents over time  
20 for the same development and activity.

21 Now, it isn't a nameless and faceless company  
22 that's done that. Those improvements have come about  
23 from three things that the Intel scientists, engineers,  
24 and technicians have managed to accomplish. It takes  
25 drive, it takes creativity, and it takes teamwork.

1           The processors that were developed here that  
2 we're going to be talking about were developed by teams  
3 of more than a thousand people. They're very  
4 complicated. They have lots of different functions and  
5 features. The technology that we're talking about here  
6 today is really just a very small part of that.

7           These are the names of the processors that  
8 have been accused of infringement in this case. You'll  
9 hear different code names and product names throughout  
10 the course of the case and we'll try to make that clear  
11 but I wanted to highlight one of them and that's called  
12 the "Tukwila processor." That's the very first one that  
13 was manufactured.

14           And here's why I wanted to highlight that for  
15 you. You just heard Mr. Albritton mention a letter from  
16 BBN that was sent to Intel in 2007. That was the very  
17 first time that Intel ever heard anything at all about  
18 these patents, that November of 2007 letter. By then the  
19 Tukwila processors were already being manufactured. Now,  
20 what that means is before Intel ever heard about these  
21 patents, the technology that we're going to be talking  
22 about here was fully developed. The patents, BBN, and  
23 Mr. Milliken didn't have anything to do with it.

24           You'll hear from a gentleman named Debendra  
25 das Sharma and another gentleman named Bob Maddox who

1 will discuss with you the evolution and history of how  
2 Intel came about rolling 16-bit CRC technology. And it  
3 goes all of the way back to 2001.

4 Let's talk next about the Milliken patent  
5 claims and why they aren't valid. Now, it turns out that  
6 CRCs, cyclic redundancy check technology, is very old.  
7 It's more than 50 years old. I'm showing on the screen  
8 right now to the left a figure that has a cyclic  
9 redundancy check circuit that was included in a paper  
10 that was published back in 1961. That's before LBJ was  
11 sworn in as president. It's a long time ago.

12 In the intervening years there have been 500  
13 patents that have been issued by the Patent Office on  
14 many different ways to do CRC technology. So, there's a  
15 lot of CRC technology that's out there; and just because  
16 there are CRCs that are being used by Intel in connection  
17 with these chips doesn't answer any of the questions. We  
18 have to look further. We've got to look beyond just the  
19 word "CRC."

20 On the right-hand side of this diagram is  
21 actually a figure from Mr. Milliken's patent. It's  
22 Figure Number 4. And it actually shows the exact same  
23 calculating circuit that was published all the way back  
24 in 1961.

25 Now, let me be specific about the prior art.

1 This is Dr. Gavin Stark you're seeing on the screen. I  
2 think you'll enjoy meeting him. He's come here a long  
3 ways, from Cambridge, England, where he lives with his  
4 family; and he's going to talk to us about -- mostly  
5 about two different chips. He has spent -- after being  
6 educated at Cambridge and getting his PhD, he spent the  
7 better part of 25 years designing network processors, the  
8 very same kind of processors that the patents are about.

9 I'm holding in my hand two of the chips that  
10 he designed. Now, these chips were real products that  
11 actually went into real things that got sold and used by  
12 folks. One of them is the Hydrogen, which is also known  
13 as the "PS-7900." The other one is the Monsoon. He's  
14 designed a lot of other network processors, but we'll  
15 focus on these two during the case.

16 There isn't any question that these are prior  
17 art. They were done before Mr. Milliken ever got started  
18 with his inventive work as he claims, and Dr. Stark is  
19 going to come here and explain to you why Mr. Milliken is  
20 actually attempting to claim the ideas that Dr. Stark  
21 worked on and developed in the products that were sold  
22 first. You have to be first to have a valid patent.  
23 Mr. Milliken wasn't the first, and that's the reason why  
24 these patents aren't valid.

25 We talked a little bit about network

1 processors. That's actually what Mr. Milliken titled his  
2 invention. The first document he sent to the Patent  
3 Office was entitled "Multiprotocol Network Processor with  
4 Instructions Optimized for Packet Processing."

5           When he did his final application to the  
6 Patent Office, he again used the word "network processor"  
7 in the title. The text of the patent also talks about  
8 network processors. And we're going to find out that the  
9 figures and the way that the patents teach to use CRCs  
10 and the claim limitations, the way they work together,  
11 they all are directed towards a style of computing that  
12 network processors need to have.

13           So, let's look just a little bit further at  
14 this concept of network processing. The Internet is a  
15 collection of big -- a big collection of computers that  
16 speak different languages to each other. If you think  
17 about perhaps a translator that works at the United  
18 Nations, somebody who speaks many different languages,  
19 that kind of a person would be very useful there in  
20 listening to people who talk different languages in  
21 helping them to communicate to each other. That's really  
22 what a network processor does. Because on the Internet  
23 you've got lots of different kinds of computers and lots  
24 of different computer languages that are called  
25 "protocols," it's important to have a network processor

1 that can deal with one kind of a language coming from one  
2 direction and a different kind of a language coming from  
3 another direction.

4 So, that's what a network processor does.  
5 They need to be able to talk different languages at  
6 different times.

7 Now, these computer languages, or protocols,  
8 actually define CRCs. They actually use different kinds  
9 of CRCs, and they have specific mathematical requirements  
10 that are written into their language protocols in much  
11 the same way that there are different rules for French  
12 than there are for languages like English and German.  
13 They all have their different rules about grammar and  
14 their different vocabulary. Well, in computer speak when  
15 we're talking about network protocols, they also have  
16 different rules about CRCs.

17 And, so, what Mr. Milliken did was he came up  
18 with an idea that said, "You know what? We're going to  
19 put into our network processor a couple of different  
20 specialized CRC circuits and we're going to use the  
21 polynomials in those circuits that are good for network  
22 processing and we're going to have different ones so that  
23 when one computer language is coming at the network  
24 processor, it can use the CRC specific for that one and  
25 then maybe send the message on along to a different

1 network using a different language and therefore a  
2 different CRC."

3           So, this idea of being able to hear through  
4 one ear, so to speak, you know, the message, translate it  
5 into a different language, use a different CRC, and send  
6 it out along was at the center of what Mr. Milliken was  
7 working on.

8           Now, I've done just a little bit of a color  
9 graphic here to kind of help us see what's going on; and  
10 this is the idea that he came up with and disclosed in  
11 his patent. First of all, you need a CRC instruction.  
12 That's going to tell the machine, tell the processor  
13 which of these CRC circuits ought to be used. And also  
14 it's going to tell the processor when to do the CRC.

15           So, we get an instruction; and in this  
16 particular case the instruction said, "I want to do a  
17 CRC-10 now" and it also said, "Do the 10 instead of one  
18 of the others." Those two jobs, when to do it and which  
19 one to use.

20           Maybe on the next iteration, there is going to  
21 be different information coming on a different protocol.  
22 And so the instruction issues; and this time when it's  
23 time to do a CRC, it says, "Do CRC-32." In a nutshell  
24 that's Mr. Milliken's idea. He actually described it in  
25 words in the patent in Column 4. I've highlighted here

1 where he's talking about that same figure we just looked  
2 at. You need to have instructions, and I want you to  
3 notice that he's talking about instructions that do two  
4 things. They indicate two separate things. We indicate  
5 first (reading) that a CRC operation is to be performed  
6 and also indicate which of the circuits 305 through 308  
7 is to perform the operation.

8 And then the demultiplexer that receives that  
9 instruction "selects the appropriate one of the  
10 circuits." "Selects the appropriate one."

11 Now, in the Hydrogen, this chip that Dr. Stark  
12 designed and helped to build, there are actually CRC  
13 circuits inside of here; and he's going to come and  
14 explain to you why there are two separate ones using the  
15 court's construction and explain to you why there's both  
16 a CRC-32 and a CRC-10.

17 You might ask yourself "Now, how is he going  
18 to prove to us what's inside this chip," right? Even if  
19 we took the top off of it, we would just see a bunch of  
20 stuff in there that looks electrical and we wouldn't  
21 really be able to tell.

22 Well, Dr. Stark actually designed the chip by  
23 using a special computer code; and we still have that  
24 code. He's going to bring it here and show it to you and  
25 point you to the places where it shows that there are

1 separate CRC circuits -- there's both a CRC-32 and a  
2 CRC-10.

3 I've highlighted just a little bit of that  
4 code here on the screen. It's too big to show all of it  
5 to you, but we'll talk further about it in a little bit.

6 There's also a CRC-10, and that's also  
7 documented by code. We know what's inside the chip  
8 because of that code, and that code is going to be  
9 important for you to look at and listen to when Dr. Stark  
10 testifies.

11 There's also instructions that go with the  
12 Hydrogen. You'll notice here that there is an  
13 instruction that's going to tell us, "Hey, it's time to  
14 do a CRC" -- that's job Number 1 of the instruction --  
15 and which of the circuits, which one of the circuits,  
16 CRC-32 or CRC-10.

17 And, so, just like Mr. Milliken was trying to  
18 teach in his patents, which was after Dr. Stark did his  
19 work, Dr. Stark's actual chip that got sold to the public  
20 which is prior art did the same thing. Dr. Stark did it  
21 first, before Mr. Milliken did.

22 He's also going to talk to you -- Dr. Stark  
23 is -- about another chip, this Monsoon chip. You'll  
24 notice these code names sometimes have an interesting  
25 ring to them. But the code name is actually what they

1 use when they are designing it; and then when it actually  
2 gets sold, it gets a product name. The product name is  
3 what's on the chip; but the Monsoon chip, or the IXP225,  
4 was one where Dr. Stark took his work from the  
5 Hydrogen -- that's called the "list manager." He put  
6 that in the chip; and then he added even more CRCs to it  
7 in something called an "AAL coprocessor," or an NPE, a  
8 network processing engine.

9           Again, another network processor just like the  
10 patents are talking about with instructions that do those  
11 two jobs, when am I going to do a CRC and which CRC am I  
12 going to do.

13           We'll get to the claims in the case. This is  
14 claim 12. It's one of the claims. I wanted to just  
15 highlight again that just like in the patent description  
16 and the figure, it's talking about those instructions.  
17 When we get to the prior art and we're thinking about,  
18 you know, did Dr. Stark's work do the same thing as  
19 Mr. Milliken later tried to claim, we're going to need to  
20 be focused on these limitations, too. And you'll notice  
21 that in the claim language itself that same idea that the  
22 patents talk about and teach is in there. You've got  
23 (reading) an instruction that indicates that a CRC  
24 operation is to be performed and it indicates which of  
25 the first and second circuits is to perform the CRC

1 operation thereby providing an indicated circuit.

2 If we have time, I'm going to introduce you to  
3 some additional folks who were network processor  
4 engineers that had the very same idea and built chips  
5 with it before Mr. Milliken, Matt Adiletta and Brad  
6 Burres worked for Intel. They worked up in  
7 Massachusetts; and they designed a network processor  
8 called the "Hyannis," or the "IXP1250," which also did  
9 the same stuff. It had multiple CRCs in it and  
10 instructions that would allow you to select between them  
11 and do the CRCs when it was time.

12 Now, here is an important piece of the patent  
13 that I think you ought to consider. We heard about, you  
14 know, the Patent Office and the work that they do.  
15 They're fine folks, and I know that they do the best that  
16 they can. But no system is perfect, just like the patent  
17 video told you this morning. And it turns out that the  
18 Patent Office didn't know about Dr. Stark's work or about  
19 Matt Adiletta's work or Brad Burres' work on network  
20 processors. They didn't know, and they didn't get to  
21 talk to those folks before they had to make a decision  
22 about whether to allow the patents.

23 And Intel, my client, didn't get to  
24 participate in that process. It's interesting that you,  
25 the members of the jury, are the very first ones in this

1 whole process who are going to hear this information and  
2 make a decision about invalidity in light of these  
3 network processor prior arts. It's an important  
4 responsibility, and we thank you for undertaking it.

5           One other thing I'd like to mention is there  
6 was a reference to the fact that Dr. Stark actually did  
7 join Intel. This Monsoon chip, this Monsoon chip, when  
8 Intel found out about it, okay, and learned about the  
9 company Basis, it was impressed with the technology that  
10 Dr. Stark had come up with and did acquire the company  
11 that he worked for.

12           And what's interesting is you'll notice that  
13 Dr. Stark -- you know, his work was acquired in the  
14 2000s, many, many, many years before BBN ever sent that  
15 letter and told Intel about these patents. So, there  
16 were lots of folks at Intel who knew about CRCs,  
17 including Dr. Stark and others. The BBN patents had  
18 nothing to do with Intel's work in the intervening years.

19           Let's talk about non-infringement. Now, we  
20 talked about network processors and how they are  
21 specialized in moving data around the Internet from one  
22 computer network perhaps all the way across the globe to  
23 another one. The technology that we're talking about now  
24 with rolling 16-bit CRC, it's not about that kind of, you  
25 know, vast open-ended different protocol communication.

1 It's also not about communications even inside a data  
2 center from one computer to another. And it's not about  
3 the server level.

4           What it is is actually the chip-to-chip level,  
5 and I actually brought something that I think might help  
6 to illustrate this. I'm holding in my hand here the  
7 inside of a server, and you'll see that there are four  
8 microprocessors that are mounted on the board. These are  
9 actually four Tukwila processors. And the communication  
10 that we're talking about for rolling 16-bit CRC, it's  
11 only communication that covers really -- it's measured in  
12 inches. It's between the chips. It's not communication  
13 that goes outside the computer to a different computer.  
14 And the communication pathways not only are in inches but  
15 it's all just one protocol. And, so, we see right off  
16 the bat, you know, the problem that the chips have in  
17 talking to each other is very different from the problem  
18 that Mr. Milliken was working on where he needed to have  
19 multiple protocols and many different things going on and  
20 choosing from one to the other.

21           Those differences actually matter when it  
22 comes to trying to understand what the non-infringement  
23 issues are about in this case.

24           Let me introduce you a little bit more to  
25 Dr. Debendra das Sharma. He's the one who back in 2001

1 proposed the idea of rolling 16-bit CRC. Now, rolling  
2 16-bit CRC got its name literally because it's kind of a  
3 rolling algorithm. Once you get going with it, you  
4 really can't interrupt it and do something else and come  
5 back to it. If you're going to roll, you've got to roll.  
6 So, that's the basic idea.

7 I want to introduce you to why. Why did  
8 rolling 16-bit CRC come into being? What happened was  
9 Intel was first considering doing this QPI, or QuickPath  
10 Interconnect, link that we've been talking a little bit  
11 about way back in, you know, the early 2000-2001 time  
12 period.

13 Dr. das Sharma, who works at Intel today,  
14 worked at Hewlett-Packard back then; and the two  
15 companies were collaborating. And Dr. das Sharma  
16 wondered whether what Intel was proposing to do with CRCs  
17 on the link might benefit from having more protection.  
18 So, one of the things that is additional and it's even  
19 mentioned in the patents here is that in order to get  
20 more protection, you make your CRC calculation longer.

21 You might think of that like a password to  
22 your account, you know, on *Google Mail* or something like  
23 that. If you make it longer, you're going to get a  
24 little more protection. Well, the principle is kind of  
25 the same with CRCs. You want to get more protection; you

1 make it longer.

2           So, he suggested to Intel that hey, maybe we  
3 ought to be making the CRC longer on this link. And  
4 Intel said we really don't want to do that because we're  
5 microprocessor people and what we need to do is to make  
6 products smaller not bigger. And, so, having a longer  
7 CRC would have required more pins and made the chip  
8 bigger; and that wasn't a good idea.

9           So, when Dr. das Sharma heard that, he went  
10 back and started thinking, "Well, how could I make the  
11 CRC stronger without making it longer?" And he thought a  
12 lot about that and came up with a very ingenious idea  
13 which isn't mentioned anywhere in the Milliken patents  
14 and which is very different from Mr. Milliken's approach.

15           This is what he came up with. This is the  
16 rolling algorithm. You won't see anything like that in  
17 the patents. What it requires is the combination of two  
18 different packets, two different packets running through  
19 two different CRCs and then combining those things  
20 together.

21           Now, we went over how Mr. Milliken's patents  
22 talk about picking one or the other, being able to switch  
23 back and forth between one or the other. That's not what  
24 rolling CRC is about.

25           Now, because of the technique that

1 Dr. das Sharma came up with, whereas in the Milliken  
2 patents if you wanted to have a 16-bit CRC value instead  
3 of an 8-bit value you would need a longer CRC,  
4 Dr. Debendra das Sharma's idea was, "Hey, we can come up  
5 with this rolling algorithm and we can make each of those  
6 8 bits stronger instead of making the thing longer."

7 So, here's a couple of slides that I'm going  
8 to show you that kind of describe the differences between  
9 8-bit and the rolling 16-bit that kind of lead to the  
10 discussion of non-infringement.

11 Most of the computers that use the accused  
12 chips actually don't even use the rolling 16-bit CRC.  
13 For a long time Intel wasn't aware of anybody using such  
14 a thing. Today we know that Hewlett-Packard is using  
15 them on some of the servers that they make but not all.  
16 But folks like IBM that use Intel's chips and others,  
17 they don't use the rolling 16-bit algorithm at all. Why?  
18 Because they don't need to. 8-bit is good enough. And  
19 when you're doing 8-bit, what happens is each and every  
20 Flit that comes out, the hardware just automatically,  
21 without waiting for any kind of an instruction, slaps an  
22 8-bit CRC on it using a circuit called a "generator A."  
23 So, every time you're doing a packet -- and they call  
24 them "Flits" for flow control unit. Every time you're  
25 doing one of those Flits, Generator A gets used.

1           This is what the CRC rolling algorithm that  
2 Dr. Debendra das Sharma came up with looks like and how  
3 it works. You're running one packet or Flit through  
4 Generator A, and you're running a second packet or Flit  
5 through Generator B. You've got two different generators  
6 there going with two different Flits but then you're  
7 going to combine them together and it's the combination  
8 that you're going to use as the check sum.

9           Now, that idea isn't part of what Mr. Milliken  
10 came up with and talked about in his patents; and it's  
11 different from the claims. And let me just illustrate  
12 why. If we look at the claim again, claim 12, we've got  
13 that demultiplexer limitation again and the instruction  
14 needs to do two things, instruction that has to do two  
15 things.

16           First, the instruction needs to indicate that  
17 a CRC operation is to be performed. Now, when you set up  
18 your QPI link, it just runs and rolls. If you're using  
19 rolling or if you're using 8-bit, it just goes. Every  
20 time there is a Flit, you've got to have a CRC. In fact,  
21 in the definition of the Flit itself, it has to have a  
22 CRC. So, it doesn't wait for an instruction to do that.  
23 The hardware is set up to do it on its own.

24           There are instructions in these chips, but  
25 they don't manage this process. The instructions are for

1 other kinds of things where you need to know when to do  
2 something and when not to do them. With the QPI link,  
3 there is no question. If we're going to send a Flit,  
4 you've got to have a CRC. That's just part of the  
5 definition; and, so, the hardware is set up to work  
6 automatically without waiting for an instruction to tell  
7 it to do one. And, so, because we don't have that kind  
8 of an instruction, one that's going to say, okay, it's  
9 time, do a CRC, there isn't infringement for that reason.

10           There is not infringement also for a second  
11 reason. If you notice here our instruction is supposed  
12 to do a second job. It's supposed to indicate "which of  
13 the first and second circuits is" -- it's not "are"; it  
14 doesn't say "both" -- "which of the first and second  
15 circuits is to perform the CRC operation thereby  
16 providing an indicated circuit." Ladies and gentlemen,  
17 two is not one. And, so, the claim doesn't talk about  
18 rolling 16-bit CRC. Technology developed for chips that  
19 talk to each other over a single protocol this way, but  
20 what the claim is talking about is that idea of having  
21 networks with different protocols and the need and the  
22 ability to switch on the fly. If I'm going to talk one  
23 language, I need one CRC. If I'm going to start talking  
24 another language, I need an instruction to tell me to  
25 switch over between one or the other. It's not a claim

1 about both.

2 And we'll be introducing further details about  
3 that to you, and my time is just about spent. I've  
4 enjoyed speaking to you. I haven't said anything about  
5 damages, and there is a reason for that. If these  
6 patents are invalid, as Intel contends that they are, or  
7 if they are not infringed as Intel contends that they  
8 are, no damages are appropriate.

9 Now, we will be presenting evidence on damages  
10 because the court has kindly indicated that we need to  
11 present whatever we're going to present on all issues.  
12 But it isn't because we don't have confidence in those  
13 liability defenses.

14 The final thing I'll mention to you is that  
15 most of the server products that Intel sells, the vast  
16 majority of them that have QPI, QuickPath Interconnect,  
17 don't even have the 16-bit option on them. So, the idea  
18 that rolling 16-bit is somehow important, okay, you're  
19 going to hear evidence that's going to suggest that it's  
20 not. It just hasn't been accepted in the marketplace.  
21 So, the allegations that they are making about a lot of  
22 value being derived by Intel, the evidence is going to  
23 contradict.

24 The other thing that you're going to learn is  
25 that the two licenses that Stragent received to the

1 other -- from those other companies were for sums that  
2 were very small compared to the amount that they are  
3 asking today. They were for \$100,000 and for \$350,000;  
4 and you're going to hear testimony that is going to  
5 explain that those people settled those lawsuits because  
6 they wanted to avoid the cost of the litigation. It  
7 wasn't because they thought that there was value there.  
8 And you're going to be invited to use those comparisons  
9 to decide what to do there.

10 Thank you for your time and your attention,  
11 and we look forward to your deliberations and your  
12 verdict. Thank you very much.

13 THE COURT: Okay. I thank both counsel. Now  
14 it is time for our lunch break. We'll return at 20  
15 minutes to 2:00.

16 Remember, members of the jury, not to discuss  
17 the case with anyone else and even among yourselves until  
18 you get to the final deliberations.

19 Now, lunch has been provided. The parties  
20 have gotten together and agreed to provide lunch to the  
21 jury; so, you have lunch in the jury room. You can go  
22 out of the courthouse and stretch your legs if you want,  
23 but you don't need to go out for lunch.

24 So, we'll adjourn now until 20 minutes of  
25 2:00.

1 (Recess, 12:41 p.m. to 1:40 p.m.)

2 (Open court, all parties present, jury  
3 present.)

4 THE COURT: Now is the time for the receipt of  
5 the evidence and the plaintiff will go first. So,  
6 Mr. Albritton.

7 MR. ALBRITTON: Thank you very much, your  
8 Honor.

9 Plaintiff calls Stephen Milligan.

10 (The oath is administered.)

11 THE COURT: Mr. Albritton, you may begin.

12 MR. ALBRITTON: Thank you, your Honor. One  
13 moment.

14 Your Honor, may I approach the witness and the  
15 court.

16 THE COURT: Yes.

17 MR. ALBRITTON: May it please the court.

18 THE COURT: You may proceed.

19 DIRECT EXAMINATION OF STEPHEN MILLIGAN

20 CALLED ON BEHALF OF THE PLAINTIFF

21 BY MR. ALBRITTON:

22 Q. Dr. Milligan, would you please introduce yourself  
23 to the jury?

24 A. Good afternoon. I'm Stephen Milligan.

25 Q. Dr. Milligan, how old a man are you?

1 A. I'm 66 years old.

2 Q. Do you have a family?

3 A. Yes, I do. My wife Carol and I have been married  
4 for 42 years, and we have three adult children.

5 Q. Where do you and Carol live, Dr. Milligan?

6 A. We live in a rural town about 30 miles west of  
7 Boston which is called "Stow," Massachusetts.

8 Q. Dr. Milligan, where did you go to undergraduate  
9 school?

10 A. I was the very first in my family to go to  
11 college; and I went to MIT, the Massachusetts Institute  
12 of Technology.

13 Q. And what degree did you receive from MIT?

14 A. At MIT I got a degree in aeronautical and  
15 astronautical engineering.

16 Q. While you were at MIT in undergraduate school, did  
17 you have the opportunity to work on any exciting  
18 projects?

19 A. Yes, I did. I had the great fortune to be able to  
20 work on the Apollo project. I worked on the guidance and  
21 control for both the command module and the lunar  
22 excursion module.

23 Q. After you finished your undergraduate work at MIT,  
24 did you go on and get a PhD?

25 A. Yes, I did. I went to the University of Rhode

1 Island and got a master's and a doctorate in ocean  
2 engineering.

3 Q. Dr. Milligan, where are you currently employed?

4 A. I'm currently employed at BBN Technologies.

5 Q. And what company owns BBN?

6 A. BBN is owned by Raytheon Corporation.

7 Q. What is Raytheon?

8 A. Raytheon is a large defense contractor. They make  
9 patriot missiles and big radars and things like that.

10 Q. Tell us a little bit about BBN. When was it  
11 founded and by whom?

12 A. BBN was founded in 1948 by two MIT professors and  
13 one of their graduate students, and they founded the  
14 company to do the design work on the General Assembly  
15 Hall of the UN.

16 Q. Now, you said BBN is currently owned by Raytheon.  
17 How much did Raytheon pay to purchase BBN?

18 A. They paid \$350 million.

19 Q. Prior to BBN being owned by Raytheon, tell us a  
20 little bit about the ownership history of BBN.

21 A. Well, just before Raytheon purchased us, we were  
22 held by a group of venture capitalist firms and some of  
23 the -- and the employees. Before that, there was -- it  
24 was Verizon, a large telephone company. Before that,  
25 GTE. Before that, we were a publicly traded company on

1 the New York Stock Exchange.

2 Q. Where is BBN located, Dr. Milligan?

3 A. Our main office is in Cambridge, Massachusetts.

4 Q. Are there other offices of BBN?

5 A. There are seven other offices, yes.

6 Q. How many people today work for BBN?

7 A. There are 750 people.

8 Q. And how long have you been at BBN?

9 A. I've been there since 1978. It's coming up on 36  
10 years.

11 Q. Dr. Milligan, what is your current title at BBN?

12 A. I am the chief technologist, the chief technical  
13 officer of the company.

14 Q. And how long have you been the chief technical  
15 officer?

16 A. I was appointed the chief technical officer in  
17 1999.

18 Q. As the chief technical officer, are you ultimately  
19 responsible for all of BBN's technical projects?

20 A. Yes, I have the ultimate technical responsibility  
21 for our performance of those projects, yes.

22 Q. Are you a named inventor on any United States  
23 patents?

24 A. I have 12 issued U.S. patents.

25 Q. Just on a very high level, what's the subject

1 matter of some of those patents?

2 A. Well, they are fairly varied. The most recent  
3 ones are on radar and communications. There is one on  
4 spam processing, several on optimal scheduling and  
5 optimal planning; and the vast majority are on the  
6 detection of -- detection and tracking of sniper bullets.

7 Q. What are your responsibilities as the chief  
8 technical officer at BBN?

9 A. They are largely split three different ways. The  
10 first and foremost is my technical responsibilities  
11 overseeing the execution of all of our projects;  
12 secondly, I'm the sort of voice of the technologists and  
13 the other scientists with the rest of the executives; and  
14 lastly, I meet with the senior technical levels of our  
15 clients.

16 Q. Tell the ladies and gentlemen of the jury a little  
17 bit about what BBN does.

18 A. Well, BBN is a contract research and development  
19 company. That means we bid on and win competitive  
20 contracts to build the first of something typically,  
21 typically for the U.S. Government actually.

22 Q. Well, let's talk about that. Who are the -- what  
23 kind of customers or clients, if you will, does BBN have?

24 A. Essentially all of our customers are in the  
25 science and technology part of the government. The

1 largest single client is DARPA.

2 Q. Let me interrupt you there. What is DARPA?

3 A. DARPA stands for the Defense Advanced Research  
4 Projects Agency.

5 Q. Okay. What other governmental agencies does BBN  
6 do work for?

7 A. So, the other agencies again are in science and  
8 technology. So, there would be AFRL, Air Force Research  
9 Laboratory; Army Research Laboratory; Office of Naval  
10 Research; and the National Science Foundation.

11 Q. Does BBN also do work for private industry?

12 A. Yes, we do.

13 Q. About what percentage of BBN's work is  
14 governmental work and what percentage of BBN's work is  
15 for private industry?

16 A. Well, it varies year to year; but many years it's  
17 about 90 percent government work.

18 Q. How does BBN normally charge for and get paid for  
19 its work?

20 A. Essentially all of our contracts are -- we're paid  
21 by the hour. We basically charge an hour when we work  
22 for a client.

23 Q. Dr. Milligan, does BBN have experience in Internet  
24 technologies?

25 A. Yes. I think you could say we do have a lot of

1 experience in that.

2 Q. Does that include designing routers and related  
3 equipment for use with routers?

4 A. Yes. BBN won the very first contract from DARPA  
5 to build the very first device which ultimately would be  
6 called a "router." It was called an "interface message  
7 processor" at the time. And we had the contract to put  
8 up the first four nodes of the Internet.

9 Q. What was the Internet originally called?

10 A. It was called the "ARPANET" then.

11 Q. Now, have there been any books written about BBN's  
12 work with respect to the development of the Internet?

13 A. Yes. There was a book written. I believe it was  
14 called "Where Wizards Work [sic] Late."

15 Q. Has BBN also been involved in other Internet  
16 technologies?

17 A. After our founding of the Internet, we've worked  
18 on it more or less continuously since then. A fellow  
19 that still works for us, Ray Tomlinson, sent the very  
20 first e-mail. He's the one that picked the "@" sign to  
21 put in your e-mail address. Early on we built the  
22 defense data network which was the network for the entire  
23 defense department, their network. And subsequently  
24 we've worked a lot for DARPA building various advances in  
25 the network as the network has grown and improved.

1 Q. And all of that work involves the design of  
2 hardware, for instance?

3 A. Typically the specification of the hardware, yes,  
4 though we don't actually do detailed design of hardware  
5 ourselves.

6 Q. Okay. Now I want to talk to you about some work  
7 at BBN in the late Nineties and the early Two Thousands.  
8 Can you give us an example of a few projects that were  
9 significant at BBN?

10 A. Well, one of the significant ones was the DARPA  
11 gigabit router. DARPA was interested in essentially  
12 proving to the world that it was possible to build a  
13 router that was substantially faster than anything that  
14 existed at that time, and BBN wanted competitive  
15 procurement to build this gigabit router.

16 Q. How many gigabytes was it intended to --

17 A. It was intended to be 10 gigabits, which DARPA  
18 generally tries to do something that is ten times the  
19 speed of the art, at that point in time.

20 Q. Let's talk about BBN's work for private industry  
21 and also in some Internet technologies. Has it also done  
22 that as well?

23 A. Yes, we have.

24 Q. And why don't you tell us about some of the  
25 projects that you've been personally involved in at BBN.

1 A. Well, the one that I'm sort of the most proud of  
2 is -- it was a DARPA request. The director of DARPA  
3 called us and asked us to work on a problem for our  
4 troops. They were being shot at and we previously had  
5 experience in detecting sniper bullets and we were asked  
6 to build a system that would detect and localize snipers  
7 and alert our troops in their vehicles.

8 Q. What is that system called?

9 A. It's called "Boomerang."

10 Q. And where has it been deployed?

11 A. There's nearing 10,000 of them deployed in Iraq  
12 and Afghanistan.

13 Q. Has BBN received any awards for its technological  
14 achievements?

15 A. Yes. The first significant one was in 1991 when  
16 the IEEE awarded us the Corporate Innovation Award for  
17 our work on the Internet.

18 Q. What is the IEEE?

19 A. The IEEE is the international electronics and  
20 electrical engineering society.

21 Q. And is there a more recent award?

22 A. Yes. Last year, in February, we had the great  
23 honor to be awarded this country's highest technical  
24 award. That's the National Medal of Technology and  
25 Innovation.

1 Q. Did you personally receive that award?

2 A. Well, I got to go to --

3 Q. I mean not receive the award. Were you there when  
4 it was awarded?

5 A. I would never take credit for the work of the  
6 other people that worked on it. I did get to go to the  
7 White House, along with our president, to accept the  
8 award on behalf of the other people.

9 Q. I would like to visit with you about Walter  
10 Milliken. Who is Walter Milliken?

11 A. Walter Milliken was a BBN employee. He started  
12 work in 1978, as did I.

13 Q. Does he still work at BBN?

14 A. No. He retired in -- about three years ago -- I  
15 think it was 2010 -- to help attend to his aging mother.

16 Q. He lives there in the northeast with his --

17 A. He lives up in New Hampshire.

18 Q. I'd like to visit with you about -- was  
19 Mr. Milliken at BBN continuously, or was there any time  
20 that he took away from BBN?

21 A. In the late Nineties there was the sort of  
22 Internet boom or the dot-com boom, and he -- there was a  
23 number of spinouts that happened where people left BBN.  
24 And, so, in 1999 he left BBN and went to a start-up  
25 router company. He was the CTO of that router company.

1 Q. And about how long was he at that start-up  
2 company?

3 A. It was about a year.

4 Q. So, you said he was the CT0. The chief technical  
5 officer?

6 A. Yes, he was the CT0 of that company.

7 Q. At the time that Mr. Milliken retired from BBN,  
8 what was his title?

9 A. Walter was a principal scientist.

10 Q. Now, if you would, Dr. Milligan, tell us about the  
11 various levels within BBN and how one graduates from one  
12 level to the next.

13 A. Like most companies, we have a sequence of  
14 promotions that you can win going up through the ranks.  
15 The last two of those are different in the sense -- like  
16 many companies that are scientifically oriented, these  
17 actually require the validation of your contribution to  
18 the community by outside people. So, IT actually  
19 requires letters of recommendation from the outside that  
20 you are actually well recognized in your field. Many  
21 other companies besides BBN refer to this as a "fellow."

22 Q. Did Mr. Milliken -- did he have the highest  
23 position at the time he retired?

24 A. At the time he retired, he was a principal fellow,  
25 yes.

1 Q. If you would, describe for the members of the  
2 jury, Dr. Milligan, how Walter Milliken was sort of  
3 viewed technologically within the company.

4 A. He was highly sought after. He was one of our  
5 leading architects and --

6 Q. What is an architect?

7 A. Well, the architect is somebody who has sort of  
8 the overall vision of how something should go together,  
9 basically understands the project and all of its pieces  
10 and understands the best way to allocate the  
11 functionality between different pieces of software,  
12 different pieces of hardware, what should go in hardware,  
13 what should go in software, and basically drive the  
14 project to a successful conclusion.

15 Q. I want to talk to you about Mr. Milliken, some of  
16 his more significant projects around the late Nineties  
17 and the early Two Thousands. Would you tell the ladies  
18 and gentlemen of the jury about a few of those?

19 A. Yes. He worked on a NASA project called the  
20 "terminal access control." He worked for -- on the DARPA  
21 multigigabit router; and he was, in fact, the tech lead  
22 on that just prior to 2000.

23 Q. I want to take you back to that time frame, 2000,  
24 the summer of 2000. Were you the chief technical officer  
25 of the company at the time?

1 A. Yes, sir, I was.

2 Q. Are you familiar with a project called either the  
3 "iRouter project" or the "Super Router project"?

4 A. Yes, I am.

5 Q. If you would, tell the members of the jury on a  
6 high level about that project, please, sir.

7 A. We'd been approached by a company called "Irvine  
8 Sensors." Irvine Sensors made chips or designed chips  
9 and they had designed one which was going to be a very  
10 high-speed switch but it was just a single chip and they  
11 thought that it should be possible to turn that chip into  
12 a router because it was so fast. And at the time we were  
13 essentially the only independent company in the world  
14 where you could come to -- that didn't otherwise make  
15 routers as a living. You could come to us and say,  
16 "Could your scientists help us turn this chip into a  
17 router?"

18 So, they came to us and, through a sequence of  
19 consulting agreements and contracts, asked us to help  
20 them turn that chip into a router.

21 Q. When did that project start, Dr. Milligan?

22 A. They first contacted us in late '99. I think the  
23 first actual contract was in 2000.

24 Q. You mentioned the company was Irvine Sensors. Is  
25 that a private company or governmental agency?

1 A. It's a private company.

2 Q. I've handed you a notebook, Dr. Milligan. I've  
3 handed one to Intel's lawyers and to the court. And I  
4 would like you, if you would, please, sir, to turn to the  
5 first tab. That's Plaintiff's Exhibit 171.

6 All right. The members of the jury can see it  
7 as well.

8 Would you tell us what this document is,  
9 Dr. Milligan?

10 A. Yes. This is a contract for us to perform a time  
11 and materials contract to begin the design of the  
12 so-called "Super Router."

13 Q. And what was the date of this agreement?

14 A. Effective 19 May 2000.

15 Q. Is that right around the time -- did the project  
16 start right after this?

17 A. It would have started the next day.

18 Q. Now I'd like to turn your attention to Plaintiff's  
19 Exhibit 172.

20 A. Yes.

21 Q. Do you recognize this document, Dr. Milligan?

22 A. Yes. This is a subsequent document where the work  
23 had been expanded to do a larger project for the actual  
24 router architecture and development.

25 Q. And what's the date of this document?

1 A. It is dated 28 August.

2 Q. Dr. Milligan, were you personally -- I'm sorry.

3 Excuse me.

4 Was Walter Milliken involved in this iRouter  
5 project?

6 A. Yes, he was. He was the lead architect.

7 Q. Were there any inventions or patents that came out  
8 of this project?

9 A. Yes, there were.

10 Q. If you would, look in your binder at Plaintiff's  
11 Exhibit 1, please, sir.

12 What do you see there in front of you,  
13 Dr. Milligan?

14 A. I see a patent referred to as '072. It's a  
15 "Network Processor Having Cyclic Redundancy Check  
16 Implemented in Hardware."

17 Q. If you would, flip to the back near the end to the  
18 claims. It would be in Column Number 6.

19 A. Column 6.

20 Q. Do you understand on a high level that that is one  
21 of the claims at issue in this case?

22 A. Yes.

23 Q. And then if you would, go to the next page at  
24 Column Number 7 which is claim 16.

25 A. Yes, I see that.

1 Q. And do both of those claims claim a, quote,  
2 device?

3 A. It says "the device of claim 12," yes.

4 Q. Was the device of claim 12 and the device of  
5 claim 16 invented by Walter Milliken during his work on  
6 this iRouter project?

7 A. Yes, sir, it was.

8 Q. I'd like you to now look at Plaintiff's Exhibit 2.  
9 What is that, Dr. Milligan?

10 A. This is the '244 patent.

11 Q. Is it also a patent that came out of the iRouter  
12 project that lists Walter Milliken as an inventor?

13 A. Yes, it is.

14 Q. Are these the two patents that are at issue in  
15 this case?

16 A. Yes, it is.

17 Q. If you would, please look at Plaintiff's  
18 Exhibit 3. What is Plaintiff's Exhibit Number 3?

19 A. It is patent '102.

20 Q. Okay. And, now, is that also a patent that came  
21 out of this iRouter project?

22 A. Yes, it is.

23 Q. Now, these three patents -- the '072 patent, the  
24 '244 patent -- which are involved in this case -- and  
25 this '102 patent -- are those all within the same patent

1 family?

2 A. Yes. They would be called that, yes.

3 Q. So, they are related?

4 A. They are closely related, yes.

5 Q. Thank you very much.

6 Were there other inventions that came out of  
7 the iRouter project other than these three patents we've  
8 just talked about?

9 A. Yes. There were three other patents that came out  
10 of it.

11 Q. If you would, tell the ladies and gentlemen of the  
12 jury, on a high level, what those three other groups of  
13 patents that came out of this same project relate to.

14 A. There was one that was called a "ternary CAM" for  
15 use in a network processor -- that would be a three-way  
16 content addresser of memory -- there was one for flow  
17 control between multiple processors -- multiple network  
18 processors -- multiprotocol flow between processors; and,  
19 lastly, an execution unit for a network control  
20 processor.

21 Q. Dr. Milligan, was Walter Milliken one of the named  
22 inventors on all of those patents?

23 A. Yes, he was.

24 Q. Was there a project that was ultimately built and  
25 commercialized as a result of this iRouter project?

1 A. No, there wasn't actually.

2 Q. If you would, explain to the members of the jury  
3 why.

4 A. Well, Irvine Sensors ran out of money and wouldn't  
5 pay us anymore.

6 Q. So, BBN doesn't work for free?

7 A. No, sir.

8 Q. I'd like to turn back your attention to  
9 Plaintiff's Exhibit 1 and Plaintiff's Exhibit 2. You  
10 don't need to look at them in particular; but that's the  
11 '072 patent and the '244 patent, the patents that are at  
12 issue in this case.

13 On a high level as a factual matter, what do  
14 these patents relate to?

15 A. Well, the key aspect of these patents is to have  
16 multiple hardware independent CRCs for error detection in  
17 packet processing.

18 Q. Two separate circuits each with their own  
19 hardwired polynomial?

20 MR. BURMAN: Objection, improper opinion  
21 testimony, lack of foundation.

22 THE COURT: Could you repeat the question?

23 BY MR. ALBRITTON:

24 Q. These patents are about two CRC circuits with  
25 their own hardwired polynomials?

1 A. Yes, sir.

2 MR. BURMAN: Objection, leading. Sorry, your  
3 Honor.

4 THE COURT: Overruled.

5 MR. ALBRITTON: Thank you, your Honor.

6 BY MR. ALBRITTON:

7 Q. As the chief technologist of the company, do you  
8 have an understanding about the advantages of these  
9 patents?

10 MR. BURMAN: Same objection, your Honor.  
11 Improper opinion testimony and lack of foundation.

12 MR. ALBRITTON: Your Honor, they asked him  
13 these questions specifically at his deposition.

14 THE COURT: Overruled.

15 BY MR. ALBRITTON:

16 Q. So, if you would, Dr. Milligan, tell the ladies  
17 and gentlemen what the advantages of -- the advantages of  
18 the inventions in the '072 patent and the '244 patent  
19 we're here about today.

20 A. The advantages would be that it's fast because  
21 it's in hardware and flexible because it has multiple  
22 circuits for processing different CRCs.

23 Q. What company, Dr. Milligan, currently owns  
24 Plaintiff's Exhibit 1, 2, and 3?

25 A. Stragent.

1 Q. Does BBN have a financial stake in the outcome of  
2 this litigation?

3 A. Yes, we do.

4 Q. If you would, explain that to the jury.

5 A. Yes. We sold these patents for a license fee for  
6 15 percent of the ongoing revenue stream that might be  
7 generated from licensing them.

8 Q. So, if this jury awards money for Intel's  
9 infringement, does BBN receive part of the proceeds?

10 A. We would receive 15 percent, yes.

11 Q. Is BBN proud of these inventions, Dr. Milligan?

12 A. Yes, we are.

13 Q. Are you proud of the work that Walter Milliken  
14 did?

15 A. This work and all the rest of the work he did,  
16 yes, sir.

17 MR. ALBRITTON: Pass the witness, your Honor.

18 MR. BURMAN: Your Honor, if she could approach  
19 the witness with our notebooks.

20 THE COURT: Yes, but please identify yourself  
21 for the record.

22 MR. BURMAN: Yes. My name is David Burman,  
23 one of the counsel for Intel.

24 THE COURT: You may proceed.

25 \*

1 CROSS-EXAMINATION OF STEPHEN MILLIKEN

2 BY MR. BURMAN:

3 Q. Dr. Milligan, my name again is David Burman. I'm  
4 one of the attorneys for Intel in this matter.

5 As you told us in your deposition, you had no  
6 direct involvement with the Irvine Sensors project; isn't  
7 that correct?

8 A. That is correct, sir. Yes.

9 Q. And you didn't know anything about  
10 Mr. Milliken's -- Dr. Milliken's work on CRCs in that  
11 project?

12 A. Not about CRCs, no, sir.

13 Q. Okay. And you know that no one else was listed by  
14 BBN as an inventor even though the law would have  
15 required you if someone else had materially participated  
16 from BBN?

17 A. That is true, sir.

18 Q. And you also know that Walter Milliken -- and I  
19 apologize if I get the "Milligan" and "Milliken"  
20 confused.

21 A. He and I have done that for 36 years so...

22 Q. Yes. He's worked as a consultant for you and for  
23 Stragent from time to time since his retirement, has he  
24 not?

25 A. A few hours, yes.

1 Q. And he worked on this case for a time, correct?

2 A. Yes.

3 Q. Now, the possible Irvine Sensors project that you  
4 said never got finished, it wasn't built on a platform of  
5 BBN products, was it?

6 A. No, sir.

7 Q. And it didn't evolve from any BBN products?

8 A. No.

9 Q. And the project was never finished?

10 A. Correct.

11 Q. Technology was never used?

12 A. Correct.

13 Q. The patents were never used by BBN or anyone else  
14 that it worked for to make products?

15 A. Correct.

16 Q. It's Mr. Milliken's invention, correct?

17 A. Yes, sir.

18 Q. And you agree that the question is whether he  
19 really did something meaningful and not whether BBN is a  
20 great company, correct?

21 A. But it's the inventor, yes.

22 Q. And I think you said in your deposition nothing  
23 about BBN is relevant other than Mr. Milliken and what he  
24 did, correct?

25 A. Sir, I would say that our previous work and

1 Walter's previous work on a large number of routing and  
2 Internet packet processing things is highly relevant.

3 Q. Correct. And BBN and the people that you tried to  
4 sell these patents to repeatedly identified the patents  
5 as involving network processors; isn't that correct?

6 A. In the -- they have repeatedly -- I don't know  
7 about repeated. They identify them in the processing of  
8 packets, yes.

9 Q. And you mentioned that BBN had sold these patents  
10 to Stragent for 15 percent interest and a small up-front  
11 amount, correct?

12 A. That is true.

13 Q. And that was part of an effort to monetize  
14 hundreds of BBN patents?

15 A. They were part of the original offering of that,  
16 yes.

17 Q. Okay. And you were part of approving that  
18 offering in 2007; isn't that correct?

19 A. That is correct.

20 Q. And you sent a request for proposals to a bunch of  
21 technology companies and not just Intel, for a hundred or  
22 more patents.

23 A. Yes, sir.

24 Q. Okay. And you reviewed that request that went out  
25 to all of those companies?

1 A. No, sir, I did not review the actual letter that  
2 went out.

3 Q. Okay. But you did review the selection of the  
4 patents, correct?

5 A. I did review the selection of the patents offered.

6 Q. And you divided the patents into categories so  
7 that the companies who received it could know if they  
8 were relevant, correct?

9 A. They did have labels, yes.

10 Q. And the categories these all went under were  
11 network processors or networking?

12 A. I believe the title was "networking."

13 Q. And that's, in fact, what you said to Intel when  
14 you communicated to Intel after that package was put  
15 together for all of those companies.

16 A. I don't know what was said actually.

17 Q. Oh, because you didn't review the letter. Okay.

18 Now, you never suggested to Intel or to any of  
19 the companies that you're aware of that these patents  
20 related to server processors or to the links inside a  
21 computer chip or between chips on a single board,  
22 correct?

23 A. No.

24 Q. Now, it's true that Walter Milliken told you --  
25 Mr. Milliken or Dr. Milliken. I apologize -- that he

1 thought Intel's network processors might infringe; isn't  
2 that right?

3 A. He did bring that to our attention, yes.

4 Q. And he had studied Intel's network processors and  
5 their evolution over the years leading up to 2001-2002;  
6 isn't that right?

7 A. I cannot state whether he studied them or not.

8 Q. You're aware, aren't you, that he used an Intel  
9 network processor as part of the development platform for  
10 his work for Irvine Sensors?

11 A. I didn't believe he had used it for Irvine  
12 Sensors.

13 Q. Well, he suggested to Irvine Sensors that this  
14 patent should be applied for because Intel network  
15 processors might infringe; isn't that correct?

16 A. I don't know that one way or the other, sir.

17 Q. And isn't it true that the patent was written as  
18 much as possible to cover network processors and, in  
19 particular, to copy Intel network processors?

20 A. I actually interpret it differently, sir. If you  
21 think of packet processing, then --

22 Q. I'm sorry. I apologize. Could you answer my  
23 question first?

24 A. Could you please restate it, then?

25 Q. Isn't it true that the intention of Walter

1 Milliken and Mr. Houh was to write the patent in a way  
2 that would cover Intel network processors?

3 A. I have no information about that, sir.

4 Q. Now, you never told Intel about your suspicion of  
5 internetwork processors; isn't that correct?

6 A. Not to my knowledge.

7 Q. Because you were afraid that if you did, they  
8 would investigate it; and if they disagreed they would go  
9 to court to have the issue resolved properly; isn't that  
10 correct?

11 A. No, sir.

12 Q. Why didn't you tell them that you thought --

13 A. We had no reason to believe one way or the other  
14 that they were utilizing it. That would have required  
15 knowledge that was not public knowledge to us one way or  
16 the other.

17 Q. In terms of their use in network processors.

18 A. I asked -- we -- I didn't do it. We asked Walter  
19 to look at the available public information and tell us;  
20 and he said, "I've looked at it. I can't tell without  
21 finding out more from what's inside it."

22 Q. Isn't it true that there are probably ten  
23 documents in this case where he says, "I think Intel  
24 network processors infringe"?

25 A. I think the important word is "I think."

1 Q. But that's a little different than what you just  
2 said, isn't it?

3 A. We asked him. He said, "I think." And we asked  
4 him to go find something in the public, and he was unable  
5 to do so.

6 Q. But he did tell you that he had used an Intel  
7 network processor as part of his development platform;  
8 isn't that correct? So, he was familiar with it.

9 A. But I'm unaware of what information was available  
10 to him to use it at that high level.

11 Q. And he mentioned specifically it was the IXP line  
12 of network processors from Intel, didn't he?

13 A. Yes, he did.

14 Q. The network processors that had the technology in  
15 them before he conceived of anything and before he  
16 applied for a patent; isn't that correct?

17 A. I don't know that.

18 Q. Now, Intel wasn't the only company that had no  
19 interest in these patents; isn't that true?

20 A. That is true. It was offered to some companies,  
21 yes.

22 Q. You started with hundreds of patents, and you just  
23 simply were unsuccessful in monetizing them at all.

24 A. We entered into negotiations with a fair number of  
25 companies.

1 Q. And only Stragent took a few patents.

2 A. That is true ultimately, yes.

3 Q. At a price that was lower than what you wanted?

4 A. We got -- in terms of the ongoing revenue stream,  
5 15 percent was what we had hoped to get.

6 Q. But you also knew that the way to get that revenue  
7 stream through a company like Stragent was to threaten  
8 other technology companies, correct?

9 A. I would actually prefer if they had just licensed  
10 the use.

11 Q. And you knew that the way they sold themselves to  
12 you was by telling you they had a unique ability to find  
13 hidden value in patents, correct?

14 A. I was not a party to any of those talks. I can't  
15 comment on that.

16 Q. Okay. That was Mr. Howell that did that?

17 A. Yes, Houh.

18 Q. Houh. I'm sorry. I apologize. I'll get all of  
19 these names wrong before the week is over, and I  
20 apologize to everyone.

21 If you could look in the book that you have in  
22 front of you at Defendant's Exhibit 150 and just see if  
23 you remember seeing that back in 2008 when you were  
24 selling these to Stragent.

25 A. 2008.

1 Q. There are plaintiff's exhibits with a red "P" --  
2 or a blue "P" and then defense exhibits with a red "B" on  
3 them, and this is 150.

4 A. 150.

5 Q. And it's on the screens as well.

6 A. That isn't what this is, 150. This isn't the tab  
7 at --

8 Q. Is it a P or a D? I'm sorry. There's both in  
9 there.

10 Well, let me just ask this. If you can look  
11 at the screen, do you recognize that as something you  
12 considered when you selected Stragent?

13 A. I didn't -- I never saw this at that time.

14 Q. Thank you.

15 So, the effort to monetize caused you to offer  
16 these patents to IBM and they said no, correct?

17 A. Yes, sir.

18 Q. And to HP, and they said no?

19 A. Yes.

20 Q. These are people who know a little bit not just  
21 about computer chips but about networking and the like,  
22 don't they?

23 A. They would seem to, yes.

24 Q. Okay. Verizon, your prior parent company, ran  
25 networks; and it didn't want to keep these patents when

1 it let you go?

2 A. Verizon doesn't make any products to run networks.

3 Q. But it uses products, correct?

4 A. It does use products but --

5 Q. And the company that spun off when Verizon and GTE

6 merged, GTE Internetworking -- I think it was called --

7 that was a network company, correct?

8 A. It built networks, yes.

9 Q. And it was spun off without wanting to have this  
10 technology.

11 A. Again, it didn't make products.

12 Q. Now, you said that you felt, from looking at the  
13 patents, that there might be some value in the speed that  
14 the patents would add to processing network protocol as  
15 they come through?

16 A. Yes, I said that.

17 Q. Okay. This doesn't actually speed up how fast  
18 data moves, does it?

19 A. No. It speeds up the verification of the packet  
20 once it arrives at the device.

21 Q. It doesn't slow down as much, the data, as it  
22 comes across the Internet.

23 A. It doesn't slow down the processing in the device.

24 Q. Well, even Mr. Milliken said in the patent that it  
25 would slow down the device when you were choosing between

1 two circuits. It would slow down --

2 A. I cannot comment on that. I don't recall what  
3 Walter said.

4 Q. It says it in the patent, and I thought you  
5 studied the patent.

6 A. I'd have to re-read that sentence to be sure, sir.

7 Q. Thank you.

8 THE COURT: Redirect?

9 MR. ALBRITTON: Thank you, your Honor.

10 May it please the court?

11 REDIRECT EXAMINATION OF STEPHEN MILLIGAN

12 BY MR. ALBRITTON:

13 Q. Dr. Milligan, Mr. Burman asked you a lot of  
14 questions about network processors. Was there anything  
15 in claim 12 or claim 16 in that patent -- does it ever  
16 use the word "network processor"?

17 A. Not when I read it, no. It used the word  
18 "device."

19 Q. You also said that processors -- I think I wrote  
20 this down right -- processors process packets. Is that  
21 what you said?

22 A. Actually I think I said devices process packets.

23 Q. Okay. Devices process packets.

24 Let me ask you this: Do processors, like  
25 server processors -- do they process packets?

1 A. Yes, sir, as do all the rest of the computers in  
2 this room.

3 Q. There is nothing unique about network processors  
4 versus server processors with respect to processing  
5 packets?

6 MR. BURMAN: Objection, leading.

7 THE COURT: Overruled.

8 BY MR. ALBRITTON:

9 Q. You can answer the question.

10 A. Many devices process packets. My iPhone processes  
11 packets.

12 Q. He asked you -- Mr. Burman asked you questions  
13 about this letter that was sent to companies and some  
14 high-level categorizations. When BBN sent these packets  
15 out, these requests for proposal, did it expect that the  
16 companies would actually look at the patents themselves  
17 and determine what they covered?

18 A. Yes. That would be the expectation.

19 Q. Could Walter Milliken or Steve Milligan or anyone  
20 ever really know whether a Intel network processor had  
21 two separate CRC circuits, each with its own hardwired  
22 polynomial, and an instruction without looking at the  
23 actual computer code that is confidential and proprietary  
24 to Intel?

25 A. I do not believe so, no.

1 Q. Mr. Burman asked you questions about other  
2 companies and their noninterest in the purchase of these  
3 patents. Do you recall those questions?

4 A. Yes, I do.

5 Q. During the course of the negotiation among --  
6 strike that.

7 Let me ask you this. Did other companies  
8 initially show interest specifically in the patents that  
9 are at issue in this case?

10 A. Yes, sir, they did.

11 Q. During the course of negotiations between BBN and  
12 other companies, were there any concerns identified by  
13 those companies concerning the prior ownership of BBN by  
14 Verizon?

15 A. Yes. The split-up of BBN, BBN Planet, and Verizon  
16 and ingenuity was -- it was a little messy and there were  
17 some issues about which patents went with which company  
18 and it took some years to actually resolve it.

19 Q. Were there also issues about whether Verizon had a  
20 license or had granted licenses to those patents to other  
21 companies?

22 A. Yes. There was residual concern about whether or  
23 not they retained some rights to it.

24 Q. Did that seem to have an effect on other  
25 companies?

1 A. It did seem to cool off the negotiations, yes.

2 Q. In this case nobody is saying that Intel has a  
3 license to these patents by virtue of Verizon?

4 A. Not to my knowledge, no.

5 Q. But back at the time of the sale, were there some  
6 concerns in that respect, of other companies?

7 A. They expressed concern about whatever Verizon  
8 might want.

9 MR. ALBRITTON: Pass the witness.

10 THE COURT: Anything further?

11 MR. BURMAN: Nothing further, your Honor.

12 THE COURT: Now the jury should pass the  
13 sheets to the court security officer whether or not you  
14 have any questions.

15 Okay. None of the jurors has a question. Is  
16 this witness excused or subject to re-call?

17 MR. ALBRITTON: We would ask that he be  
18 excused, your Honor.

19 MR. BURMAN: That's fine, your Honor.

20 THE COURT: Okay. Thank you, Dr. Milligan.  
21 You are excused.

22 THE WITNESS: Thank you, sir.

23 THE COURT: Now you may call your next  
24 witness.

25 MR. ALBRITTON: Thank you, your Honor. The

1 plaintiff calls Walter Milliken by videotaped deposition.  
2 The total time of the deposition, as edited, is 58  
3 minutes. 30 minutes of that counts toward the plaintiff  
4 and 28 minutes of that counts towards the defendant.

5 THE COURT: Okay. Video.

6 DEPOSITION TESTIMONY OF WALTER MILLIKEN

7 Q. Good morning, Mr. Milliken.

8 A. Good morning.

9 Q. I would like you to begin today by having you  
10 describe a little bit about your background. And if you  
11 could first maybe just introduce the academic part of  
12 your background by starting after high school and telling  
13 us what you did.

14 A. Okay. I got my bachelor's degrees from Washington  
15 University in St. Louis. I have a bachelor's of science  
16 in EE and also a bachelor's of science in computer  
17 science from 1977, year of graduation. I then had a  
18 master's degree in EE from Stanford in 1978, technically  
19 Leland Stanford Junior University, I think it is. That  
20 was the extent of my formal education. I did not take a  
21 PhD.

22 Q. I'd like to go through your employment history.  
23 Maybe you could begin by telling us the first employment  
24 that you had either during or after college.

25 A. During college, during the summers, I actually

1 worked in a small company that made power supplies in  
2 Dover, New Hampshire, did a couple of other things there  
3 with that same company. I actually designed some power  
4 supplies at that time, linear power supplies.

5 After I graduated from Stanford, I did  
6 consulting for a few months designing an electronic cash  
7 register, actually, building a microprocessor and  
8 basically everything.

9 And then I started with BBN in December of  
10 1978; and I stayed there through 1998, I think it was  
11 December or might have been January of 1999. But I think  
12 I left in December of '98 to go through a spinout sort of  
13 BBN called Crescent Networks. And I was there for a bit  
14 over a year; and then I went back to BBN at the very end  
15 of May of 2000, I believe it was. And I stayed at BBN  
16 until I retired in the beginning of July of 2010. And  
17 since then I have done a little bit of consulting, but I  
18 have essentially retired at this point.

19 Q. So that I understand that question, including  
20 through today, you have never designed silicon, *per se*?

21 A. Not at the design level. I've architected it but  
22 not designed.

23 Q. Okay. And what were you hired by BBN to do?

24 A. Well, they were originally interested in me to  
25 work on a UNIX project that they were doing at the time.

1 But I wound up actually being hired into their packet  
2 satellite network research project.

3 Q. You mentioned that you left BBN with a spin-off  
4 called "Crescent."

5 A. Yes.

6 Q. And I did not capture the time period when that  
7 was.

8 A. That would have been, I think -- I don't remember  
9 exactly when I left. I think I left in November or  
10 December of '98, spent the year of 1999 at Crescent; and  
11 then as Crescent was finishing basically its architecture  
12 phase, I went back to BBN at the end of, I think it was  
13 May, started there at the very end of May of 2000. I was  
14 CTO of Crescent Networks for a while.

15 Q. Just for the record, the exhibit bears a patent  
16 number, U.S. 6,848,072. It lists an inventor, Walter  
17 Clark Milliken of Dover, New Hampshire. Is that you?

18 A. That's me.

19 Q. The patent lists only one inventor.

20 A. Yes.

21 Q. And you've indicated that you are the Walter  
22 Milliken noted here.

23 A. Yes.

24 Q. Did anyone else help you?

25 A. I don't recall specifically. I can tell you I

1 would expect that I was the sole inventor of this. I  
2 don't remember anybody else working on it, this  
3 particular one. There were a number of people working on  
4 the project. Several of the other patents had other  
5 people listed as co-inventors. But policy was we were  
6 inclusive as far as who was listed on patents. So, my  
7 expectation is I am the sole inventor. At the time we  
8 were pretty certain that I was the only person involved  
9 in the actual invention.

10 Q. Can you remember whether anybody else helped you  
11 in connection with the work that is described in this  
12 patent?

13 A. There were a number of people who worked on the  
14 project. The project had a lot of different pieces. So,  
15 in the sense that there -- yes, there were a number of  
16 people working with me on that design. As far as the  
17 actual invention goes, I don't recall specific details;  
18 but I don't recall anybody else having any input with  
19 this particular invention.

20 Q. You have mentioned a couple of times in the  
21 answers you've just given me over the last couple of  
22 minutes "the project."

23 A. Yes.

24 Q. Did the project have a name?

25 A. It had several different names depending on

1 whether you were talking about what people called it  
2 informally or what the official name was in the job  
3 system. I'm not sure I even remember the exact name it  
4 had in the internal contracts database or the job system.  
5 But it was generally referred to as the "iRouter" or the  
6 "iNetworks router" or "Irvine Sensors router."

7 Q. The Exhibit 2, the '072 patent -- are you  
8 comfortable, by the way, referring to them by the last  
9 three digits? Is that --

10 A. I'll get used to it. I'm not going to probably be  
11 able to remember which of the patents of this family are  
12 which but --

13 Q. Okay. Well, we'll try to do both. We'll say the  
14 Exhibit 2, '072 patent.

15 A. Yes.

16 Q. It has four figures at the beginning.

17 A. Yes.

18 Q. Did you prepare these figures?

19 A. No. Some of them may be derived from something I  
20 might have provided, but I don't think I actually -- I  
21 think the patent attorney may have drawn these from the  
22 original design document, run them by me for approval.

23 Q. Did you approve them before they were submitted to  
24 the Patent Office?

25 A. Yes, I did.

1 Q. There are several columns of text -- Columns 1, 2,  
2 3, 4, 5, and the first part of 6 - that have descriptive  
3 material in there. Did you have a hand in preparing any  
4 of that?

5 A. Yes. I don't believe the text itself was anything  
6 I wrote directly. I certainly spent a fair amount of  
7 time on all my patents going over the text that the  
8 lawyers produced and making sure it was accurate and  
9 making any corrections I thought were necessary.

10 Q. The patent concludes with a list of numbered  
11 paragraphs that are called "claims." There are 22 of  
12 them.

13 A. Yes.

14 Q. Did you have a role in coming up with the language  
15 in the claims?

16 A. I believe the claims themselves -- the original  
17 draft came from the patent attorney. I certainly  
18 reviewed them, and I was -- knowing the importance of  
19 claims, I generally review claims very carefully and made  
20 sure I was happy with the wording.

21 On the other hand, I am an engineer and not a  
22 patent lawyer; so, I was concerned with the technical --  
23 what I saw as technical issues, not necessarily language  
24 issues in claims.

25 Q. If I could have you open up the patent to the

1 first figure, Figure 1.

2 A. Yes.

3 Q. Where is the switching fabric depicted in this  
4 figure?

5 A. Well, there's one explicit indication of the  
6 switch there, box 112. The network itself would contain  
7 other switches.

8 Q. Where might the other switches be?

9 A. Depending on the network, generally they could be  
10 anywhere from somebody's equipment closet to, you know,  
11 sitting in a point of presence, a POP, in the Internet  
12 core.

13 Q. There is a reference to a rectangle that is  
14 divided up at the top of the figure. One part of the  
15 rectangle is labeled "instruction store 203." Do you see  
16 that?

17 A. Yes.

18 Q. What is an instruction store?

19 A. It's generally a memory of some sort dedicated to  
20 containing computer instructions.

21 Q. There is a reference to an "instruction sequencer  
22 204" immediately under the instruction store. What is  
23 that -- what is an instruction sequencer?

24 A. In a processor CPU, generally there is a component  
25 that determines which instruction to fetch next and

1 execute next. That's the element that is generally  
2 considered the instruction sequencer. It fetches  
3 instructions from the instruction store, and it feeds  
4 them to the rest of the machine with appropriate timing  
5 according to the logic of the program.

6 Q. There is an arrow that proceeds from the bottom of  
7 the instruction sequencer to another set of lines running  
8 horizontally between the input and output register files.  
9 What is that arrow down from the instruction sequencer  
10 supposed to be showing?

11 A. That would generally be indicating the  
12 dissemination of control data from the instruction, so  
13 pieces of the instruction being delivered to the various  
14 other units in the processor.

15 Q. I'd like to have you flip over to Figure 4 of the  
16 '072 patent. Can you explain what this figure is  
17 showing?

18 A. I would have to look at the text to be sure what  
19 it's trying to show; but it is generally a picture of a  
20 CRC log, a fairly common way of depicting a CRC function  
21 implementation.

22 Q. Is this hardware that's being depicted here?

23 A. Yes.

24 Q. There is a reference at the bottom to an equation  
25 called a "polynomial." Can you tell us what that is?

1 A. The polynomial is a mathematical function that is  
2 being used on the input data. The theoretical  
3 mathematics of it is a little beyond me. I don't  
4 normally deal with that.

5 Q. I'd like to direct your attention now over to  
6 Column 2. There is a section that begins with the  
7 heading "Detailed Description."

8 A. Yes.

9 Q. In the second paragraph at about line 62 or '3,  
10 there is a passage that reads, "One of the instructions  
11 is a cyclic redundancy check (CRC) instruction. The CRC  
12 instruction is implemented using hardwired CRC  
13 polynomials."

14 A. Yes.

15 Q. I'm interested in the phrase "hardwired CRC  
16 polynomials."

17 A. Yes.

18 Q. What is that?

19 A. Those would be polynomials that are implemented  
20 biologic equations generally and then reduced to silicon  
21 in some fashion.

22 Q. The phrase "hardwired" there sounds like it's sort  
23 of baked in or fixed in the hardware. Is that what's  
24 being talked about here?

25 A. The polynomials are not programmable nor

1 configureable, just selectable.

2 Q. I'd like to direct your attention to the bottom of  
3 Column 3. The last paragraph there, towards the middle  
4 there is a passage that talks about the CRC algorithm  
5 dividing. Do you see where I am generally referencing?

6 A. Yes.

7 Q. The full sentence reads, "The CRC algorithm  
8 divides this large value by a number (the CRC polynomial  
9 or generator polynomial), leaving the remainder, which is  
10 the CRC result."

11 A. Yes, I see that.

12 Q. Is it correct that the patent suggests that you  
13 can produce a CRC result by dividing a number by the CRC  
14 polynomial?

15 A. This is basically the theoretical definition of  
16 CRCs, mathematical definition.

17 Q. Is there a different mathematical operation that  
18 CRC could have?

19 A. I don't understand the mathematical theory behind  
20 CRCs terribly well. I don't think of them as division.

21 Q. What do you think of them as?

22 A. Shift and XOR operations.

23 Q. Sort of like what is shown in Figure 4?

24 A. That's one implementation, yes.

25 Q. Is there a different way to implement shift and

1 XOR than what is shown in Figure 4?

2 A. Yes. That's the serial implementation. There are  
3 parallel implementations as well.

4 Q. Do the parallel implementations have a name?

5 A. They are generally just referred to as "parallel  
6 designs."

7 Q. There is a passage near the top of -- well, you're  
8 going to have to read the bottom part of Column 3 and  
9 then the very first two lines of Column 4 to get the  
10 context; and let me give you a second to do that.

11 My question is going to be whether or not  
12 there is a typo in that sentence.

13 A. Yes, I see that.

14 Q. Is there a typo?

15 A. I believe so.

16 Q. Can you tell us the fix?

17 And let me just -- for the record, for  
18 context, let me just read the passage in; and then you  
19 can tell us how to fix it.

20 "When the data is received (or recovered from  
21 storage) the CRC operation can be reapplied, and the  
22 latest result compared to the original result. If no  
23 error has occurred, the CRC results should not match."

24 How would you fix that passage?

25 A. I believe the results are supposed to match, not

1 not match. The word "not," I believe, is spurious.

2 Q. When you say spurious, you mean it shouldn't have  
3 been there?

4 A. I believe that's correct. I would have to go back  
5 and check the -- not all of these functions produce the  
6 identical result in all cases, but I believe this is  
7 in -- the way it's stated is incorrect.

8 Q. I want to direct your attention to Column 4 --

9 A. Yes.

10 Q. -- at about line 28.

11 A. The start of the paragraph?

12 Q. Yeah. If you could just take a second to read  
13 basically that paragraph, I have a couple of questions  
14 for you.

15 A. Okay. I've read the paragraph.

16 Q. This paragraph I take to be referring to Figure 3.

17 A. I believe so. Yes.

18 Q. And the passage at the top again is referring to  
19 the "demultiplexer 301" which you indicated decodes  
20 instructions.

21 A. That part of -- yes.

22 Q. Part of the decode operation is to ascertain that  
23 a CRC operation is supposed to be performed, correct?

24 A. I don't believe that is the intent in this case.

25 Q. Why not?

1 A. I believe in the context of this picture, we're  
2 now considering only the part of the instruction where it  
3 has already been identified as being some sort of CRC  
4 operation; and now we're just determining which one of  
5 the CRCs to perform.

6 Q. So that the decoding operation would be -- which  
7 of the CRC blocks should be used for the operation?

8 A. That is the decode operation that is being  
9 performed there, I believe, yes.

10 Q. I'd like to direct your attention specifically to  
11 the middle part of the same paragraph. It's about  
12 line 32. Over to the right there is a sentence that  
13 begins "Demultiplexer 301" --

14 A. Yes, I see it.

15 Q. -- "selects the appropriate one of the circuits  
16 305-308 when the instruction indicates a CRC  
17 instruction." Do you see that?

18 A. Yes, I do.

19 Q. Where in reference to Figure 3 would the  
20 indication of a CRC instruction, the latter part of that  
21 sentence, happen?

22 A. I'm sorry. I don't understand what you're asking.

23 Q. Okay. The sentence seems to suggest that the  
24 demultiplexer selects the appropriate one of the circuits  
25 when something happens, and the "when that happens" is

1 the instruction indicates the CRC instruction.

2 A. Yes.

3 Q. So, my question is: With reference to Figure 3,  
4 when does that happen? When does the instruction  
5 indicate a CRC instruction?

6 A. I believe in the context of the figure, that is  
7 outside the scope of the figure slightly.

8 Q. There is another passage in the same paragraph.  
9 It's down to about line 38. It says, "CRC circuits  
10 305-308 may include two inputs" --

11 A. Yes.

12 Q. -- "input data and current state value data."

13 A. Yes. I see that.

14 Q. With reference to Figure 3, can you tell us where  
15 those two inputs are depicted?

16 A. These are aggregated together in this picture.

17 Q. And where is the aggregation?

18 A. The input CRC data.

19 Q. Okay. So, that's supposed to indicate both  
20 inputs?

21 A. I believe that is what is stated there.

22 Q. Okay. So, I just want to make sure I'm not  
23 missing something else that would help us understand what  
24 state data is. Is there anything else in the patent that  
25 you're aware of that refers to state data or that would

1 implicitly show what state data is or how it operates?

2 A. I'm sure there are references to state data. I'm  
3 not sure if they clarified the situation further.

4 Q. What does it mean to have a polynomial hardwired  
5 into a CRC circuit?

6 A. The form of the logic that is used to calculate  
7 the CRC is dictated by that mathematical polynomial.

8 Q. And therefore what happens in the circuit  
9 implementation because of that fact?

10 A. The circuit implements a particular mathematical  
11 logical operation that is dictated by that polynomial.

12 Q. The next step, the third step in claim 1, reads,  
13 "receiving current CRC state data at the selected CRC  
14 circuit."

15 A. Yes.

16 Q. In this context, what does "current" refer to  
17 there?

18 A. The CRC operation may be performed in pieces; and  
19 this is in the context of -- I might be partway through a  
20 CRC calculation; and I have to reload the state,  
21 reprovide the current state of the circuit to the logic.

22 Q. So, you're talking about an incremental  
23 calculation?

24 A. The calculation is typically performed multiple  
25 times on sub-blocks of the input data, and it may be

1 interrupted in the middle.

2 Q. And is that why you need the current CRC state  
3 data?

4 A. The performing a CRC operation implicitly is going  
5 to have state data in some form somewhere, either present  
6 in the circuit or it has to be supplied externally.

7 Q. Why do you say it necessarily must be there?  
8 Couldn't you have a stateless implementation?

9 A. No.

10 Q. Why not?

11 A. It's an operation that requires multiple stages of  
12 computation; and you can unroll them to a degree, perform  
13 multiple and simultaneously.

14 Q. What about a CRC computation where you didn't need  
15 to do it more than once, all you had to do it was just  
16 once? Is it possible to implement that kind of a CRC  
17 computation in a stateless model?

18 A. It would certainly not be a typical  
19 implementation.

20 Q. But a possible one?

21 A. I don't think it would be a practical one  
22 typically.

23 Q. You can't rule it out, though?

24 A. The state would still be present implicitly in  
25 intermediate nodes of the circuit; but whether it would

1 have an explicit memory device, it would be theoretically  
2 possible but extremely impractical.

3 Q. Is there an implementation of this concept here in  
4 claim 6 that is shown in the patent anywhere?

5 A. It's not shown explicitly, no, not in the figures.

6 Q. Is it shown implicitly?

7 A. In Figure 3 the distribution of data to the units  
8 could be interpreted that way.

9 Q. When you say "distribution of data to the units,"  
10 I'm taking it to be referring to the arrow that proceeds  
11 from input CRC data down and then there is a set of  
12 arrows that go into the tops of the CRC functional box.

13 A. Correct.

14 Q. And why do you say that that could be interpreted  
15 as a switch?

16 A. In standard practice in hardware engineering,  
17 sometimes when you see a signal that is being distributed  
18 to a lot of different units but you don't actually need  
19 to do so, you don't want to do so because it causes  
20 electrical issues, someone might put a switch there to  
21 direct the data to the specific unit and not drive the  
22 other ones.

23 Q. In July of 2000, what were you doing at BBN?

24 A. I was working on the iNetworks router project and  
25 another project or two. I can't be sure exactly how many

1 I was working on at the time. I was certainly working on  
2 the iNetworks project.

3 Q. Who is Craig Partridge?

4 A. Craig Partridge was the chief scientist for BBN in  
5 network technology.

6 Q. Did you report to him?

7 A. Sometimes.

8 Q. Was he your boss?

9 A. For a very brief period I believe he was  
10 technically my boss. BBN's management chain was kind of  
11 complicated.

12 Q. You told us earlier today that you started back at  
13 BBN after having left Crescent in May of 2000.

14 A. Yes.

15 Q. Was this iNetwork project underway by the time you  
16 came back to BBN?

17 A. They were just in the process of starting it.

18 Q. What were you asked to do first?

19 A. That's a hard question. Everything. Basically I  
20 was tasked with trying to look at the problem that they  
21 were proposing, the product they wanted to build, and  
22 suggest architecture for it.

23 Q. What was the problem they were trying to solve?

24 A. They wanted to build a very high-end terabit speed  
25 switch/router that would operate on any protocol known at

1 the time.

2 Q. When you say "protocol," you're talking about a  
3 communication protocol?

4 A. Yes. And that included conventional telephony as  
5 well as Internet-type protocols.

6 Q. Did it include ATM?

7 A. Yes.

8 Q. Ethernet?

9 A. Yes.

10 Q. When you say "telephony," what are you referring  
11 to?

12 A. Standard PCM-TDM channel substructure telephone  
13 signals.

14 Q. Why don't you do your best to tell me how you did  
15 sort of break the problem down and then come up with the  
16 solution that you came up with.

17 A. I remember I had to look at a lot of the protocols  
18 involved early on and try to determine what requirements  
19 they would place on the hardware, what things we would  
20 have to do to them and we would have to extract them from  
21 the channels and reassemble them. There were a lot of  
22 bits and pieces and a lot of different protocols; so, I  
23 spent some amount of time looking for commonality and how  
24 could we build one device that would deal with a very  
25 wide variety of protocols.

1 Q. What were the -- sort of the wishes or the  
2 expectations that were communicated from Irvine Sensors?

3 A. At a very high level what they wanted to build was  
4 what the industry referred to at the time as a "God box,"  
5 a switch that would handle anything at high-speed.

6 Q. I take it the idea of a God box is not something  
7 that BBN came up with. It was a larger concept?

8 A. There were a lot of people in the industry at the  
9 time thinking about whether they wanted to build such a  
10 thing, whether it was practical, whether it was  
11 commercially viable. So, the concept was understood. It  
12 was a convergence switch.

13 Q. We're talking again about the start of your work  
14 after coming back to BBN in May of 2000, and you're  
15 starting to work on the iNetwork router project.

16 A. Yes.

17 Q. How far into that process did you start looking to  
18 see whether there might be something outside that you  
19 could use?

20 A. That was very early on, and it didn't last very  
21 long because there wasn't anything out there that was  
22 even close. The speeds weren't available.

23 Q. Let's just take the '072 patent, which is  
24 Exhibit 2, for a second. Are you able to say with  
25 reference to an event, when you conceived of the subject

1 matter that is claimed in that patent?

2 A. The only way I can remember what dates things came  
3 in is to look at various revisions of the documents from  
4 the project and/or e-mails that reference some of the  
5 things we were doing in the design. So...

6 Q. When you look at documents and you see dates on  
7 them, I take you to be suggesting that you can reason  
8 that things must have been such-and-such because you see  
9 a date on a document.

10 A. Yes.

11 Q. As opposed to having an independent recollection.

12 A. Yes.

13 Q. And I'm understanding you today to say that you do  
14 not have an independent recollection of when you came up  
15 with the ideas that are claimed in the '072 patent.

16 A. I know vaguely the time period; but to give you  
17 any kind of specific date, I cannot.

18 Q. What is your vague recollection?

19 A. The summer of the year of 2000.

20 Q. Why do you put it in the summer of 2000?

21 A. Because most of the high-level details of the  
22 architecture of that were pinned down somewhere in that  
23 general time frame. And most of the preliminary design  
24 work was done in the summer of 2000, the architecture and  
25 preliminary design.

1 Q. Did the CRC functionality of the iNetwork router  
2 ever change over the course while you were working on it?

3 A. I don't remember any specifics about any changes.  
4 I don't think it changed very much, if any.

5 Q. Do you remember any changes?

6 A. I don't recall any offhand, no.

7 Q. You say that "ALU will probably be 32 or 64 bits  
8 wide." Do you see that?

9 A. Yes.

10 Q. What is that a reference to?

11 A. The ALU of the network processor we were  
12 designing.

13 Q. Is that the amount of data that could be handled  
14 in one chunk by the ALU?

15 A. Yeah, the data width going into on which it  
16 performed operations, whether it was going to be  
17 natively -- what is typically referred to in the industry  
18 for CPUs as the "width" of the data unit. At that time  
19 32 was more common. 64 was wider than common.

20 Q. I would like to begin at the end chronologically,  
21 which I think is the second paragraph. It refers to  
22 iNetwork Corporation developing a cash flow shortage in  
23 June of 2001. Do you remember that event?

24 A. Yes.

25 Q. How did you find out about it?

1 A. There was a general knowledge that they were  
2 seeking additional funding, I believe, through that  
3 period leading up to that because they were discussing it  
4 occasionally, about talking to outside finance. And  
5 then -- that had been ongoing for a while; and then the  
6 specific date here, I think, was the project manager was  
7 told to stop work and came around and told everybody to  
8 stop work on the project. That was sort of the formal  
9 point.

10 Q. And did you stop work?

11 A. Yes.

12 Q. Did you ever begin the work again?

13 A. I don't remember precisely. I remember there were  
14 some stoppages and restarts occasionally. I think those  
15 predate that final stop, but I can't be sure.

16 Q. At the time that the project was stopped, what was  
17 the state of the development?

18 A. Most of the -- you know, the architecture work was  
19 pretty much complete at that point. A lot of the  
20 high-level design was complete. The simulator assembler,  
21 I believe, were in progress and partially working but not  
22 complete.

23 Q. This would be the simulator for the high-level  
24 functional behavior?

25 A. That's correct, yes.

1 Q. So, a simulator for low-level hardware  
2 functionality never was created?

3 A. No.

4 Q. When you say "no," you're agreeing with me as  
5 opposed to disagreeing with me?

6 A. We never did any -- built any hardware level  
7 simulations stuff.

8 Q. And, in fact, you never actually designed the  
9 hardware.

10 A. There's multiple levels of hardware design. We  
11 did some degree of hardware design but not to the level  
12 of actually starting to lay down gates or write code,  
13 logic code.

14 Q. Do you know one way or the other whether Irvine  
15 Sensors ever built a product that actually implemented  
16 the ideas that are described and claimed in the  
17 '072 patent, the '244 patent, or the '102 patent?

18 A. As far as I know, the project was abandoned midway  
19 and no product was ever created.

20 Q. Do you know whether BBN ever built a product of  
21 any kind that implemented the ideas that are disclosed  
22 and claimed in those three patents?

23 A. I don't know of any such product, but BBN made a  
24 great many things that I was not directly involved in.  
25 It is entirely possible it might have been used

1 somewhere.

2 Q. If it was, you just don't know about it?

3 A. I do not know of any such thing.

4 Q. Mr. Milliken, from June, 2001, when the work on  
5 the iRouter project was ended, through September 7th of  
6 2001 when the application for the '072 patent was filed,  
7 I take it there was no work that was being done in  
8 connection with trying to build the ideas that you  
9 disclosed and claimed in the '072, '244, and  
10 '102 patents?

11 A. I can't recall any.

12 Q. You've been handed Exhibit 6 to the deposition.  
13 Do you recognize this document?

14 A. Yes, I believe I recognize it.

15 Q. What is it?

16 A. I believe this is the provisional that we filed  
17 that resulted ultimately in two different patents, one of  
18 which is the CRC patent we've been discussing.

19 Q. Okay. I'd like to have you pick up Exhibit 2 if  
20 you could.

21 A. Exhibit 2. That's the '072 patent?

22 Q. Yes.

23 A. Got it.

24 Q. On the first page there is a reference, under the  
25 heading "Related U.S. Application Data," to a provisional

1 application.

2 A. Yes.

3 Q. And it gives a number and a date. Is Exhibit 6 a  
4 copy of that provisional application?

5 A. I don't believe I can verify that. I don't think  
6 the provisional application -- oh, it is there. Okay.

7 Yes. Yes. This is the document that was the  
8 provisional quoted here.

9 Q. I'd like to direct your attention to the page that  
10 ends in the production code 1502. There is a paragraph  
11 partway down the page that talks about the ALU providing  
12 three flags. Do you see that?

13 A. Yes.

14 Q. And then right underneath that is another  
15 paragraph that talks about the operations performed by  
16 the ALU falling into four basic groups. Do you see where  
17 I'm at?

18 A. Yes.

19 Q. Those four groups include arithmetic and logic  
20 functions including priority-encode, CRC operations,  
21 shift and extract operations, and pattern-matching  
22 instructions, right?

23 A. Yes.

24 Q. I see on the next page there is also a reference  
25 to functions that the ALU will support. There are four

1 listed there -- a CRC-32, a CRC-16, a CRC-10, and a  
2 CRC-8, correct?

3 A. Correct, although there is another reference in  
4 the CRC-8 one to an additional possible CRC function.

5 Q. Can you explain that? I'm not understanding what  
6 you're saying.

7 A. The CRC-8 function has a note that there is a  
8 basic CRC-8 function and there continued to be a variant  
9 version of that which was used to decode certain things  
10 in ATM protocols.

11 Q. There is a reference to SONET.

12 A. Yes.

13 Q. What is that?

14 A. Synchronous Optical Network Equipment Transport.  
15 I forget what the latter part of the acronym means.

16 Q. What is SONET used for?

17 A. SONET is a common low-level protocol for optical  
18 data transmission, including telephony signals and  
19 computer data.

20 Q. And that would be a different format than the ATM  
21 protocol format?

22 A. No. It is an underlying layer to the ATM protocol  
23 format typically.

24 Q. I don't see anywhere in the provisional  
25 application that mentions hardwired polynomials in a CRC

1 circuit. Do you?

2 A. It doesn't say with the term "hardwired." It  
3 references specific well-known polynomials that were used  
4 in the standard protocols.

5 Q. So, the reference to "32," "16," "10," and "8"  
6 next to "CRC" is a reference to a polynomial?

7 A. Those are -- that is shorthand for particular  
8 polynomials that are of those lengths commonly used in  
9 network protocols, yes.

10 Q. So, you're saying that CRC-32 is a reference to a  
11 polynomial?

12 A. It is a reference to a specific polynomial applied  
13 with a particular length of state data.

14 Q. And that would be true for CRC-8?

15 A. Yes.

16 Q. And 10?

17 A. Yes.

18 Q. What's the reference to CRC-10? What polynomial?

19 A. I forget where that one is used. I think it may  
20 be one of the ATM ones. I've forgotten. There is a  
21 specific CRC-10 polynomial used in some common network  
22 protocol. I think it was one of the ATM ones. I've  
23 forgotten specifics.

24 Q. I want to make sure I understand this concept  
25 completely. If we just focus on CRC-32, is it your

1 testimony that CRC-32 refers to one and only one  
2 polynomial?

3 A. That was the way I was using it in this document,  
4 yes.

5 Q. Have you ever seen CRC-32 being used to describe  
6 more than one polynomial?

7 A. I have only encountered a specific 32-bit CRC  
8 function that is commonly used, and that's usually  
9 referred to as "CRC-32."

10 Q. And what is that?

11 A. I couldn't quote you the polynomial.

12 Q. What about the application or protocol?

13 A. It's used in a great many protocols. It's the  
14 commonly used CRC for high-speed network packet. It's  
15 used in Ethernet. It's used in some versions of  
16 Packet-Over-SONET. It's -- I'm trying to remember. It's  
17 generally the preferred CRC polynomial for most of the  
18 longer block length or higher bandwidth network protocols  
19 these days.

20 Q. And CRC-8 here is a reference to a specific  
21 protocol for use --

22 A. That was how I was using it there. That was a  
23 particular requirement that we were satisfying to parse  
24 that protocol.

25 Q. Before you did your work, had you ever studied

1 CRC-8 usages at all?

2 A. You mean in college?

3 Q. Yeah. Take that as an example.

4 A. I was aware of the existence of CRC functions, I'm  
5 sure. I don't recall studying them in any detail.

6 Q. Do you think that there were hardwired CRC-8  
7 polynomial systems in use before you did your work?

8 A. Before this patent -- the work this patent is  
9 related to?

10 Q. Yes.

11 A. I would expect pretty much all of the CRC-8  
12 polynomials being implemented in network equipment at  
13 that time were done in hardwired circuits.

14 Q. And when you say "that time," you mean before you  
15 did your work?

16 A. Yes.

17 Q. So, you didn't invent the concept of using a  
18 hardwired polynomial?

19 A. No.

20 Q. You've been handed a document marked as  
21 Exhibit 11. It begins with the production number  
22 STRAG\_000008976.

23 A. Yes.

24 Q. A couple of other identifying features of the  
25 document. At the top it has a heading, "Arithmetic Logic

1 Unit Instructions." There is a copyright date of 2001,  
2 BBNT Solutions, LLC.

3 A. Yes.

4 Q. Do you recognize this document?

5 A. I'm not entirely sure. I think I know what it is.

6 Q. Do you recall whether you participated in its  
7 creation?

8 A. I believe this is a derived document from the  
9 other document we were looking at that was done as part  
10 of the work on the simulator.

11 Q. Since we have a lot of documents out on the  
12 table --

13 A. Yeah.

14 Q. -- could you find the one in the stack that you  
15 are now referencing?

16 A. It would be derivative from some version of the  
17 document that you have as Exhibit 9, although probably  
18 one of the earlier ones in that particular instance. I'm  
19 not sure.

20 Q. This document appears to go through instruction  
21 formats; is that right?

22 A. That is what it appears to be to me, yes.

23 Q. Are these instruction formats that are consistent  
24 with the idea that you came up with and then claimed in  
25 the patents we've been talking about?

1 A. Without studying it in detail, I can't say for  
2 sure. Personally, it looks like it's the same stuff,  
3 yes.

4 Q. There are a handful of pages from the production  
5 number 8982 through 8985 that appear to relate to CRC.

6 A. Excuse me. 8982?

7 Q. Yes.

8 A. Through 8985, yes.

9 Q. These are CRC instructions?

10 A. Yes. That's what they appear to be.

11 Q. This document doesn't talk about the hardware,  
12 does it?

13 A. It is not specifically a hardware design document.  
14 It is related to the hardware design.

15 Q. Related in the sense that these are the  
16 instructions and the format that the hardware is going to  
17 work on?

18 A. This would be considered part of the specification  
19 of the hardware.

20 Q. You wouldn't regard the specifications that are  
21 here to be hardware design implementation details, would  
22 you? For example, it doesn't show how to build the CRC  
23 circuit?

24 A. That's correct. It does not dictate the  
25 (indiscernible).

1 Q. It doesn't talk about hardwired polynomials,  
2 either?

3 A. It speaks to the fact that there are specific  
4 polynomials that will be implemented.

5 Q. But it doesn't talk about them being hardwired as  
6 opposed to being implemented in software, does it?

7 A. Hardwired can mean multiple things in context. I  
8 believe in some sense it was being used partly as a  
9 hardware. It will be implemented in logic equations. I  
10 believe it is also being used as these are fixed  
11 polynomials. They're not going to provide a variable  
12 capability. These are fixed polynomials. There are a  
13 specific set that were identified and implemented.

14 Q. When I hear the term "hardwired polynomial," I'm  
15 thinking about a polynomial that is built into hardware  
16 in a way that can't be changed.

17 A. It was certainly used in the sense that these are  
18 not configureable or programmable functions, correct.

19 Q. So, you would refer to "hardwired polynomials" as  
20 not the kind of polynomials implemented in software but  
21 rather implemented so that they couldn't be programmable  
22 or configureable?

23 A. They were intended to be a specific set  
24 unchangeable, permanently included in the hardware.

25 Q. After the provisional application was filed, did

1 you ever, you know, do anything further to look for  
2 potentially relevant information about what was out  
3 there?

4 A. I don't believe I took any further actions after  
5 the provisional was filed related to the patent filing  
6 until the drafts came back.

7 Q. When you say "the drafts came back," you're  
8 referring to what?

9 A. The outside patent counsel actually giving us a  
10 draft of the patent, the full patent filing.

11 Q. Aha. I see.

12 Were you involved at all in the process of  
13 going back and forth with the PTO?

14 A. Indirectly.

15 Q. How so?

16 A. The patent -- it depended on the particular patent  
17 and the patent attorneys prosecuting the case and the  
18 examiner and various other circumstances. But often the  
19 patent attorneys who are working on filing the patent  
20 would call me with questions or send me e-mails with  
21 questions or whatever, send me art that the examiner had  
22 found and was questioning the patent relative to.

23 Q. Do you understand that you are being represented  
24 here today?

25 A. Yes. I know that they are representing me here.

1 Q. And you understand that you are being represented  
2 without being charged a fee?

3 A. Yes.

4 Q. Do you know who's paying the fee?

5 A. I do not know personally, no. I can suspect.

6 Q. And what is your suspicion?

7 A. I would assume Stragent is paying them.

8 Q. Do you have any kind of a consulting arrangement  
9 where you are compensated for your time spent on this  
10 case?

11 A. They have agreed to pay me for some of the time I  
12 spent. It is not what I would call a "consulting  
13 arrangement."

14 Q. Okay. And what are the terms of the agreement?

15 A. They are going to pay me my usual hourly rate for  
16 the time it took the last couple of days.

17 Q. What is your usual hourly rate?

18 A. \$210 an hour.

19 Q. And how much total time will you be billing for?

20 A. About four and a half hours, I think.

21 Q. Four and a half hours total?

22 A. I believe so.

23 Q. What about for your time spent today?

24 A. I was told that I cannot be compensated for this  
25 or the court time.

1 Q. Is the four and a half hours that you spent over  
2 the last couple of days the only time that you've spent  
3 on this case except for your testimony here today?

4 A. It's the only time I'm under contract to bill for.

5 Q. So, for example, the time you spent looking for  
6 documents responding to the subpoena was --

7 A. I'm not billing for that, no.

8 Q. Are you entitled to any proceeds that may be  
9 either awarded or paid as a result of this lawsuit?

10 A. No.

11 Q. You understand that Intel Corporation is the  
12 defendant?

13 A. Yes.

14 Q. Do you know which Intel products are at issue?

15 A. No.

16 Q. You have no idea?

17 A. I was assuming it was the IXP series, but I have  
18 been told that wasn't correct.

19 Q. Why do you assume it was the IXP series?

20 A. Because I originally identified that as being  
21 infringement back when I was at BBN.

22 Q. Can you describe for me the circumstances that led  
23 you to that conclusion?

24 A. I was working on another project that happened to  
25 need a commercially available box with network processors

1 in it and we looked around and the Intel -- Intel had a  
2 box with the IXP2800 in it and we wound up using that.  
3 And, of course, doing that, I read the -- was reading the  
4 documentation and, lo and behold, it appeared that the  
5 IXP2800 infringed on the patent.

6 Q. What about the IXP2800 led you to think that it  
7 infringed on the patent?

8 A. It had a set of ALU instructions for CRC  
9 functions.

10 Q. Do you remember which ALU CRC instructions it had?

11 A. I don't recall offhand except that there were  
12 multiple of them because if it had been just CRC-32, I  
13 wouldn't have considered it infringement.

14 Q. Do you recall when this happened?

15 A. Not off the top of my head, no.

16 Q. Did it make you curious?

17 A. In what way?

18 Q. To investigate a bit more about what was going on.

19 A. I merely noted it to BBN's intellectual property  
20 people and went on with my work. I was busy doing other  
21 things.

22 Q. Did you look for any other Intel products?

23 A. I don't believe I did.

24 Q. When you say you don't believe you did, is it that  
25 you remember not doing it or you just don't have a

1 recollection one way or the other?

2 A. I certainly don't remember doing anything like  
3 that, and I don't believe I would have been doing  
4 anything like that. It's not something I would have done  
5 in the course of my work.

6 Q. There are lots of functions in a computer that  
7 could be implemented through software, correct?

8 A. Generally, yes.

9 Q. Is it also generally true that you can perform  
10 those functions more quickly if you create dedicated  
11 hardware to do them?

12 A. As a general rule, hardware is faster than  
13 software limitations, yes.

14 Q. When did you first learn that that was true?

15 A. Probably when I was in college.

16 Q. You're holding Exhibit 2 which is the '072 patent,  
17 Figure 2, correct?

18 A. That is Figure 2. It's not an entire network  
19 processor. It's the relevant subset of it.

20 Q. You don't claim to have invented network  
21 processors, correct?

22 A. No.

23 Q. And just in confining ourselves to the things that  
24 are just shown in this figure, you don't claim to have  
25 invented an instruction store?

1 A. No.

2 Q. Or an instruction sequencer?

3 A. No.

4 Q. Or input register files?

5 A. Not the general concept of them, no.

6 Q. And not the general concept of output register  
7 files?

8 A. No.

9 Q. Also not the concept of having both input register  
10 files and output register files in a network processor.  
11 You don't claim to have invented that either, correct?

12 A. No.

13 Q. I'm correct, right?

14 A. Correct.

15 Q. I'm going to have you flip over to Figure 3.

16 Figure 3 is showing details of an ALU, correct?

17 A. Of a piece of an ALU, correct.

18 Q. Right. It's not the entire ALU but potentially  
19 relevant features of an ALU for your patent.

20 A. A subcomponent of it, yes.

21 Q. Up at the upper left-hand corner, there is a  
22 reference to CRC instructions. Do you see that?

23 A. Yes.

24 Q. You don't claim to have invented the concept of  
25 CRC instructions, do you?

1 A. Not the notion of having a CRC instruction, no.

2 Q. There are four different CRC circuits -- is that  
3 true -- depicted as functional blocks in this figure,  
4 correct?

5 A. Correct.

6 Q. I want to focus first just on CRC-32. Okay?

7 A. Yes.

8 Q. You don't claim to have invented the idea of  
9 having a CRC-32 circuit with a hardwired polynomial in  
10 it, do you?

11 A. No. Those are -- that is correct. Those are  
12 preexisting art.

13 Q. And the same would be true of the CRC-16 circuit?

14 A. As an individual circuit, correct.

15 Q. The same would be true of the CRC-10 circuit?

16 A. I believe so.

17 Q. The same would also be true of the CRC-8 circuit?

18 A. Correct.

19 Q. You have shown a Demux, box 301. Just focusing on  
20 the idea of a Demux that is decoding an instruction, you  
21 don't claim to have invented that idea, do you?

22 A. Decoding to one of N is well-known.

23 Q. What would you say you did invent that is shown on  
24 Figure 3, if anything?

25 A. The gist of the invention, I would describe it as

1 being able to process multiple protocols by virtue of  
2 having multiple functional blocks that could be used for  
3 different protocols at different times or in combination.

4 Q. So, it's the idea of having the CRC-8, the CRC-10,  
5 the CRC-16, and the CRC-32 available as choices in the  
6 ALU?

7 A. To have multiple CRC instructions as part of the  
8 ALU, main ALU, yes.

9 Q. The same would be true of buses?

10 A. It would depend on the specifics of the bus.  
11 There are patented buses. But the concept of a bus, no.  
12 I did not invent the concept of a bus.

13 Q. How about the concept of comparing a CRC result to  
14 zero? Did you invent that concept?

15 A. No.

16 Q. That's one of the well-known ways of using a CRC.

17 A. I believe that is the standard output result of a  
18 CRC. (Video deposition concluded.)

19 MR. ALBRITTON: That concludes that  
20 presentation.

21 THE COURT: Would this be a good time for our  
22 afternoon break?

23 MR. ALBRITTON: Yes, sir.

24 THE COURT: Why don't we take a break now and  
25 we'll return in 15 minutes, which would be 20 minutes of

1 4:00.

2 (Recess, 3:23 p.m. to 3:42 p.m.)

3 (Open court, all parties present, jury  
4 present.)

5 THE COURT: Okay. Mr. Albritton, you can  
6 continue.

7 MR. ALBRITTON: Thank you, your Honor. The  
8 plaintiff calls Henry Houh.

9 Your Honor, may I approach?

10 (The oath is administered.)

11 MR. ALBRITTON: May I approach, your Honor?

12 THE COURT: Yes.

13 MR. ALBRITTON: Thank you very much, your  
14 Honor.

15 May it please the court?

16 DIRECT EXAMINATION OF HENRY HOUH

17 CALLED ON BEHALF OF THE PLAINTIFF

18 BY MR. ALBRITTON:

19 Q. Dr. Houh, please introduce yourself to the jury.

20 A. My name is Henry Houh. That's spelled H-O-U-H.

21 Q. I guarantee you those court reporters appreciate  
22 that.

23 Tell us a little bit about your family,  
24 Dr. Houh.

25 A. I'm married, 17 years now. I have three children,

1 age 14, 12, and 9, a boy and then two girls.

2 Q. How old a man are you?

3 A. I'm 46 years old.

4 Q. And where do you live, Dr. Houh?

5 A. I live in Lexington, Massachusetts.

6 Q. Where is Lexington, Massachusetts?

7 A. It's a suburb of Boston, about 10 miles northwest.

8 Q. Dr. Houh, what do you currently do for a living?

9 A. I do some consulting, but I spend the bulk of my  
10 time on a new business I started. It's called  
11 "Einstein's Workshop."

12 Q. If you would, tell the ladies and gentlemen of the  
13 jury about Einstein's Workshop.

14 A. It's an educational business I started to teach  
15 science, technology, engineering, art, and math to kids  
16 of all ages, from preschool all the way through adult.

17 Q. About how many kids are involved in Einstein's  
18 Workshop?

19 A. Over the past year we probably had two or 3,000  
20 kids involved, and we maybe have 200 to 300 kids that are  
21 coming every week for regular classes plus another 100 to  
22 150 for -- dropping in to explore.

23 Q. Okay. Dr. Houh, are you an inventor?

24 A. I am.

25 Q. How many United States patents do you have?

1 A. I have six.

2 Q. Dr. Houh, where did you go to undergraduate  
3 school?

4 A. I went to MIT. That's the Massachusetts Institute  
5 of Technology.

6 Q. And what did you study as an undergraduate at MIT?

7 A. I have two undergrad degrees. One is a physics  
8 degree which I received in 1989, and I have a degree in  
9 electrical engineering and computer science which I  
10 received in 1990.

11 Q. Dr. Houh, where did you go to graduate school?

12 A. I stayed at MIT for graduate school.

13 Q. Tell us about your -- what degrees ultimately you  
14 received from MIT graduate school.

15 A. I ultimately received a PhD from MIT in electrical  
16 engineering and computer science in 1998.

17 Q. Dr. Houh, while you were at MIT, were you involved  
18 in any activities that ultimately were made into a book  
19 and then later into a movie?

20 A. I was.

21 Q. Tell the jury about that.

22 A. I was part of what was known as the "MIT Blackjack  
23 Team."

24 Q. And tell us about the book and the movie.

25 A. The book was written about the team in general but

1 one particular player and it was called "Bringing Down  
2 the House" and that was made into a movie called "21."

3 Q. Did you actually appear in the movie?

4 A. I did, yes.

5 Q. Now, are you the one who said, "Winner winner  
6 chicken dinner"?

7 A. That was one of my lines.

8 Q. Okay. Now, Dr. Houh, I want to talk to you about  
9 what you started doing for work at the end of your time  
10 at MIT and what you did immediately upon getting your  
11 PhD.

12 A. I started working before I finished my PhD at a  
13 company called NBX.

14 Q. And what is NBX?

15 A. It stood for "Network Base Exchange," and we built  
16 phone systems that were -- that ran -- you know, business  
17 phone systems that ran over a data network like the one  
18 that might be in your office instead of regular phone  
19 lines.

20 Q. What were your job duties there at NBX?

21 A. So, I was a senior scientist and engineer and I  
22 designed some of the reliable protocols in order for the  
23 phones to get messages to start calls and things and I  
24 also designed the way that audio gets reconstructed so  
25 that you can hear it well with low delay. And I also

1 converted the system to use the Internet protocol.

2 Q. Who had founded NBX?

3 A. There was a classmate of mine named Alex Laats who  
4 was a physics major and also a double major, and he  
5 started the company. He started the company.

6 Q. Now, was NBX ultimately purchased by another  
7 company?

8 A. It was ultimately purchased by a company called  
9 3Com.

10 Q. And how long did you work at NBX and 3Com?

11 A. I was there about a year and a half to a little  
12 under two years, somewhere around there.

13 Q. Where did you go after that, Dr. Houh?

14 A. I went to a company called Teradyne.

15 Q. Now, what is a "teradyne"?

16 A. Well, a "dyne" is a unit of work; and "tera" is a  
17 trillion. So, I guess it means lots of work.

18 Q. What were your job responsibilities at Teradyne,  
19 Dr. Houh?

20 A. I was responsible for looking at some of the  
21 divisions that Teradyne had acquired in the recent years  
22 that I was there, and they were doing software testing.  
23 Teradyne itself had a long history of doing hardware  
24 semiconductor testing, making big machines to test big  
25 chip wafers as they come off the production line. But

1 the chairman of the company had the idea that they should  
2 get into software testing and, so, started to acquire  
3 some companies and my responsibilities were to work for  
4 those software test divisions and see if there were any  
5 missing products or evaluate strategically, you know, how  
6 to position them in the market.

7 Q. Now, was your work primarily business in nature or  
8 technical in nature?

9 A. It was actually a mix of both; so, it was a lot of  
10 fun for me.

11 Q. Did Teradyne spin out another company?

12 A. Yes. It actually packaged up those divisions and  
13 spun it out to a company known as Empirix.

14 Q. Did you go to work at Empirix?

15 A. I did, yes.

16 Q. What was your job title at Empirix?

17 A. I started as director of business development, and  
18 I eventually became chief technologist of two different  
19 divisions. And then I actually helped architect and lead  
20 the development team on a new product in data testing  
21 which was one of the gaps that I had identified.

22 Q. Dr. Houh, after you left Empirix, did you have an  
23 opportunity to reconnect with your classmate and former  
24 boss Alex Laats?

25 A. I did, yes.

1 Q. If you would, tell the members of the jury about  
2 that.

3 A. Alex at the time was at a venture capital company.

4 Q. Now, what is a venture capital company, Dr. Houh?

5 A. A venture capital company is a company that raises  
6 money and then the partners at the venture capital  
7 company invest it in businesses, and this particular  
8 company that Alex was at focused on kind of early-stage  
9 startups. So, the venture capitalists would help invest  
10 money in the company -- help the company grow and  
11 hopefully sell the company.

12 Q. Did you and Mr. Laats have an opportunity to go to  
13 work at BBN together?

14 A. Yes. So, BBN was one of the opportunities he was  
15 looking at when I was working with him there. Our plan  
16 was to do a start-up together; and even though BBN wasn't  
17 a start-up the way you think of most start-ups, it was a  
18 very good opportunity for both of us.

19 Q. Now, why is that? Had BBN just undergone any  
20 significant ownership changes at that time?

21 A. It did actually. Prior to us joining BBN, BBN was  
22 owned by Verizon.

23 Q. The telephone company?

24 A. Yes, that's right.

25 Q. All right. And were these venture capital

1 companies involved in purchasing BBN from Verizon?

2 A. Yes. So, Verizon was looking to sell BBN and the  
3 venture capitalists were very interested in buying BBN.  
4 BBN had a long, storied past and one of the lead venture  
5 capitalists on it knew about the long, storied past and  
6 he thought not only could they buy it but also create new  
7 companies out of it.

8 Q. Yeah. So, what was the ultimate goal of the  
9 venture capitalist firms that purchased BBN?

10 A. So, the ultimate goal is that they would purchase  
11 BBN, help grow BBN, and then sell BBN.

12 Q. What were your role and the role of Alex Laats at  
13 BBN?

14 A. So, as I mentioned, BBN had a long history of  
15 technological innovation and research and development and  
16 it had built things like the first data network, packet  
17 data network. It had sent the first e-mail between  
18 computers. It had done, you know -- it had the best  
19 speech recognition system that had developed. And a lot  
20 of those opportunities were not eventually commercialized  
21 by BBN. They were commercialized by many other  
22 companies.

23 Q. Well, what was going to be your new role at BBN  
24 and Mr. Laats' new role at BBN?

25 A. So, our roles -- and Alex was the division

1 president and I worked for Alex and our roles were to  
2 basically look at the technology and intellectual  
3 property and the software and the prototypes that were  
4 developed under contracts and see if there was a way we  
5 could actually turn them into companies or otherwise  
6 commercialize them.

7 Q. Okay. Dr. Houh, if you would just back up  
8 slightly. We're getting a little bit of a pop every  
9 minute or two.

10 A. Sorry.

11 Q. And maybe slow down just a hair for the court  
12 reporters if you would.

13 A. Sorry.

14 Q. That's okay.

15 So, after -- when you and Mr. Laats joined  
16 BBN, did BBN have a large portfolio of issued United  
17 States patents as well as pending patent applications?

18 A. Yes. It did end up with a lot of patents.  
19 Actually a very large number of what -- for what I think  
20 a company of that size would have, and it had over a  
21 hundred maybe 150 or more issued patents and four or 500  
22 patents pending at the time.

23 Q. Well, how did the new ownership group, this group  
24 of venture capital firms -- how did they view this group  
25 of patents and pending patent applications?

1 A. Well, you know, they were assets. You know, they  
2 were things that you have like property. But some of the  
3 patents were -- we had just too many and we had a fixed  
4 patent budget and we actually had to figure out -- but  
5 they looked at that as part of the intellectual property  
6 and part of the things that eventually we could grow into  
7 companies, some of the ideas or otherwise make money off  
8 the patents.

9 Q. So, what was your -- what were you charged with  
10 doing with respect to this patent portfolio?

11 A. So, we actually looked at breaking up the patents  
12 into several different categories. There was like a  
13 committee of us that was formed to actually work on the  
14 patent committee.

15 Q. So, what types of folks were on this patent  
16 committee?

17 A. I was on the committee. Other of my peers, my  
18 boss Alex; the general counsel; Steve Milligan, the chief  
19 technology officer. We were all on the patent committee.

20 Q. Okay. And what did you and the rest of your folks  
21 on the patent committee do?

22 A. Well, we looked at the various patents; and we  
23 broke them into various categories.

24 Q. Okay. Well, let's talk about that. About how  
25 many different categories or different ways did you

1 categorize the patents in the BBN patent portfolio?

2 A. There were about three different kind of  
3 categories or buckets we had.

4 Q. Okay. Well, if you would, explain to the ladies  
5 and gentlemen of the jury sort of what was Bucket  
6 Number 1 and what was your intention.

7 A. So, the first bucket was, you know, patents that  
8 were very important for BBN to continue doing its  
9 research and continue to kind of secure more research  
10 contracts critical to the departments in that we would  
11 need them in order to continue to perform their work.

12 Q. Okay. What about the second bucket of patents  
13 identified?

14 A. The second bucket we looked at and said, well, we  
15 may have some existing things that we could commercialize  
16 and we would like to package those patents up along with  
17 the operating company and either run it in-house or spin  
18 out the company and raise some external money with an  
19 entire kind of start-up spinout.

20 Q. If you would, give the juries an example -- let's  
21 see, give the members of the jury an example of what  
22 y'all did with these sorts of patents and technology.

23 A. So, we had a little group that had done a little  
24 bit of work for some commercial entities before and as a  
25 result got a patent, one we called the "Trombone." It

1 wasn't really about the instrument. It was kind of a  
2 "technicalese" thing.

3 But what we did with that was we actually set  
4 up a company, internal effort. We built a software  
5 service around some of the technology in the patents and  
6 the technology that we had had including --

7 Q. Back up just a hair. You're still kind of --

8 A. -- including the speech recognition system and we  
9 actually released a product that would help call centers  
10 improve their operations and efficiency.

11 Q. Now, what was the name of that company?

12 A. That was called "Avoke," and companies like Dell  
13 used that product.

14 Q. Now, Avoke, if you would spell that for the court  
15 reporter.

16 A. A-V-O-K-E.

17 Q. Okay. And was that turned into its own company?

18 A. It's still operating within Raytheon today, within  
19 BBN.

20 Q. Okay. How much money annually is that making?

21 A. I heard last year they had revenues in excess of  
22 20-some million dollars a year.

23 Q. Okay. Now, were there other companies or other  
24 projects that BBN developed around some of its patented  
25 technology?

1 A. Yes. So, there was another project called  
2 "Boomerang."

3 Q. Tell the -- the jury has heard a little bit about  
4 it. We don't need enormous detail, but tell us about  
5 that.

6 A. Boomerang was developed under our research  
7 contracts as some theories and, prior to Alex and I  
8 getting there, was actually manufactured using in-house  
9 labor, the scientists on -- for example, over  
10 Thanksgiving weekend, I believe they came and assembled  
11 and soldered 50 to 100 units of this. But we undertook  
12 an effort to figure out how to manufacture these on our  
13 own and set up actual, you know -- redesigned, you know,  
14 package product as well as figuring how to get them  
15 manufactured and get them sold.

16 Q. And who was the customer for these Boomerang  
17 systems?

18 A. Well, it was a sniper detection system. So, the  
19 customer was the U.S. -- the government, the Army.

20 Q. Did you personally work on this Boomerang project?

21 A. I did. I ran engineering as an -- on an interim  
22 basis.

23 Q. Okay. Now, Dr. Houh, has BBN continued to sell  
24 and make money off of this bucket of technology, for  
25 instance, the Boomerang?

1 A. Yes. The Boomerang had a number of patents  
2 associated with it as well as the product; but to date  
3 it's sold over a quarter billion dollars' worth of  
4 Boomerangs, over 10,000, I think, of them.

5 Q. Okay. Now, Dr. Houh, was there another bucket of  
6 patents and technology that were put into companies that  
7 were ultimately spun out?

8 A. There was. And there was an effort and a spinout  
9 that we created using BBN's speech recognition technology  
10 and software. I actually worked on this, too, to help  
11 write the prototype. We created an audio and video  
12 search engine because the search engines that are out  
13 there only recognize the text that's on the page but  
14 because we could do speech recognition we could actually  
15 listen to the words that were spoken inside audio and  
16 video files and build a pseudo transcription of the audio  
17 and video file and then that allowed people to search  
18 those audio and video files for spoken words.

19 Q. Now, did that become -- did that core technology  
20 in those patents become a company?

21 A. Yes. In fact, it got spun out, had a different  
22 name back then but today it's known as RAMP, ramp.com.

23 Q. Okay. And who are some of the customers of RAMP?

24 A. So, the customers are all the major media  
25 companies -- CBS, NBC, ABC, Reuters, ESPN, and probably a

1 bunch of others as well.

2 Q. So, what we've been talking about so far were ways  
3 that BBN -- you and Mr. Laats came in and helped BBN make  
4 money off of its patented technology.

5 A. Right.

6 Q. Now, was there another way, another strategy that  
7 BBN had that you were involved with related to the  
8 monetization or the making of money related to BBN  
9 patents and technology?

10 A. Yes, there was.

11 Q. If you would, tell the members of the jury about  
12 that.

13 A. Well, we had looked into also setting up a  
14 licensing program or potentially selling patents as well.

15 Q. Now, what do you understand to be a licensing  
16 program?

17 A. A licensing program is where someone -- someone  
18 might be using the techniques that are developed and  
19 claimed in the patent and they would pay for the right to  
20 use your invention.

21 Q. So, would it be -- BBN, for instance, could go out  
22 and ask other companies to pay for a license to use  
23 patents?

24 A. Yes.

25 Q. I want to talk to you about the time when you

1 first came to BBN. When you first came to BBN, did you  
2 have any experience that informed your decision about  
3 whether to either affirmatively license patents or to  
4 sell patents?

5 A. Well, during the time that I was at BBN, I did  
6 have that experience.

7 Q. Tell the members of the jury about that, please,  
8 sir.

9 A. So, Verizon, who used to own BBN at the time, came  
10 to us and they had -- Verizon spends like a billion  
11 dollars on research and development every year, and they  
12 have their own very large portfolio. They didn't give  
13 all of their patents to us, just some of them.

14 But it was looking to assert them against  
15 another company.

16 Q. Now, what do you mean? What happened with this  
17 assertion of this patent or these patents?

18 A. Well, they wanted to sue another company.

19 Q. Okay. So, was there, in fact, a lawsuit with  
20 Verizon?

21 A. There was, yes.

22 Q. And what was that lawsuit -- who were the parties  
23 to that?

24 A. Verizon was suing Vonage.

25 Q. Okay. And what is Vonage?

1 A. Vonage is a company that delivers phone services  
2 over the Internet. So, you don't have to have a phone  
3 line anymore. You can plug it into your Internet  
4 connection, and you'll get a dial tone.

5 Q. Now, this lawsuit happened a number of years ago.

6 A. Yes.

7 Q. What was your role or how were you involved in  
8 that, Dr. Houh?

9 A. So, because I had had voice-over-IP experience at  
10 this prior company NBX, I ended up as an expert witness  
11 for Verizon working on that patent trial.

12 Q. Now, are you here as an expert witness in this  
13 case?

14 A. No.

15 Q. Why are you here?

16 A. I have some knowledge of the facts that led up to  
17 this dispute.

18 Q. Now, was your new job at BBN -- did you consider  
19 that -- was that one of the reasons you took this job as  
20 an expert in that *Verizon versus Vonage* lawsuit?

21 A. It was. I felt that if we got some experience to  
22 see what it takes to run an active litigation, that would  
23 help inform our strategy.

24 Q. And "litigation," you mean lawsuit?

25 A. Yes.

1 Q. Okay. Now, what was your takeaway, Dr. Houh?  
2 What did you learn as a result of working as an expert  
3 witness in that *Verizon versus Vonage* case?

4 A. So, my takeaway from that case was that it was  
5 very, very expensive and very, very risky.

6 Q. So, how did that inform your decision and BBN's  
7 decision with what to do with this next group of patents  
8 that we're talking about?

9 A. So, you know, we had looked at maybe setting up an  
10 active licensing program; but you need to be able to have  
11 some, you know, enforcement, you know, behind it if you  
12 are actually going to be able to succeed. And we felt  
13 that BBN really wasn't set up the way it was doing  
14 government contracts. We didn't want to be known as an  
15 enforcement company. It was very expensive potentially  
16 with uncertain outcome; so, it's not something that we  
17 thought the venture capitalists would undertake and  
18 certainly not our management team either.

19 Q. Okay. So, what did BBN -- you and Mr. Laats and  
20 the other folks at BBN decide to do with this third  
21 bucket of patents that you identified as having value?

22 A. So, we decided that we would try to sell them or  
23 potentially work with another company on licensing them.

24 Q. Okay. And, so, what did y'all do in that respect?

25 A. So, we took all those patents we thought were

1 valuable and we didn't need to use in-house or in the  
2 company, and we categorized them. We identified a number  
3 of companies to send out a request for proposals to.

4 Q. Now, was this categorization, was that just a  
5 high-level data categorization?

6 A. Yes. It was things like these are patents about  
7 networking, these are patents about compute, these are  
8 patents about speech recognition.

9 Q. Okay. Dr. Houh, you said that you put together a  
10 request for a proposal. Tell the ladies and gentlemen  
11 about that.

12 A. So, once we had identified all the patents in this  
13 category and we put together a booklet, the booklet had a  
14 copy of the first page of every patent. It also had a  
15 copy of -- we typed them -- of claim 1 in the patent  
16 which is what the first thing it's claiming. And for  
17 every patent we had these two pages. We put them in a  
18 book. We bound it. We added a cover letter. We added  
19 the list of all the patents in the categories, and we  
20 sent it out to a number of companies.

21 Q. Now, you said it was this high-level category.  
22 You actually sent the patents that have the claims in  
23 them as well?

24 A. Yes. We had a sheet with the first claim, not all  
25 of the claims. But if people were interested and wanted

1 to follow up, they could easily look them up online.

2 Q. Are the claims what define the scope of the  
3 invention?

4 A. Yes.

5 Q. Let's talk for a second, Dr. Houh, before we get  
6 into a little more of the details there. Was there a  
7 last category of patents that BBN identified, and what  
8 did BBN do with those patents and patent applications?

9 A. Yes, there was; and it was the patents that may  
10 have helped us solve a very specialized problem but we  
11 didn't feel had a lot of value since it was a very, very  
12 narrow patent.

13 Q. Okay. And what did BBN do with those patents?

14 A. Eventually the issued ones we stopped paying the  
15 issue fees. We made a note next time there is a fee due  
16 we would not do it, and that effectively abandons it and  
17 actually gives the invention to the public.

18 Q. For those groups of patents, why did BBN do that?  
19 What was the driving force?

20 A. Well, the driving force was that, you know, they  
21 were -- they cost money to maintain. You have to  
22 actually pay a maintenance fee every four or five years  
23 or something like that. And then we didn't feel that  
24 there was -- the problem was big enough that people would  
25 be interested in a license to that invention.

1 Q. Okay. So, what category of these patents that  
2 you've just talked about did the patents in this case  
3 fall into?

4 A. These were the valuable ones that were important  
5 in IP for sale or license.

6 Q. If you would, look in your binder, Dr. Houh,  
7 Plaintiff's Exhibit 1, Plaintiff's Exhibit 2, and  
8 Plaintiff's Exhibit 3. If you would, just on a high  
9 level look at those and tell the members of the jury what  
10 those are.

11 A. Those look like the -- those are the patents that  
12 were in the RFP that were eventually sold.

13 Q. Okay. And Plaintiff's Exhibit 1 and Plaintiff's  
14 Exhibit 2 are the patents that are specifically at issue  
15 in this case; is that right?

16 A. That's my understanding, yes.

17 Q. What sorts of companies did BBN send these  
18 requests for proposals?

19 A. We actually sent the proposal to a couple  
20 different categories, one of them being companies that --  
21 big companies that often like to amass their own patents  
22 and buy others for maybe defensive purposes.

23 We also looked at companies that were buying  
24 patents and then grouping them together and licensing  
25 them.

1           And there was another category where they  
2 would help us directly help figure out how to license.

3 Q.       Okay. So, if you would, give an example of the  
4 types of companies BBN contacted in each of those  
5 categories.

6 A.       So, the company category, we sent RFPs to HP,  
7 Qualcomm, Intel, I think Palm.

8           And in the licensing category there was a  
9 company called "Acasia."

10           In the "we buy them" category, I think there  
11 was a company that was a group formed by Intellectual  
12 Ventures.

13 Q.       Okay. And what is Intellectual Ventures?

14 A.       They create and buy lots of patents, and they  
15 group them together for specific clients of theirs for  
16 licensing purposes and share joint licensing or something  
17 like that.

18 Q.       Did Acasia, for instance, one of these licensing  
19 companies, and Intellectual Ventures or an Intellectual  
20 Ventures entity express interest specifically in the  
21 patents that are at issue in this lawsuit, the '072 and  
22 the '244 patent as well as the related '102 patent?

23 A.       Yes, they did.

24 Q.       If you would, please go to Plaintiff's Exhibit 48,  
25 sir.

1 A. Okay.

2 Q. All right. Dr. Houh, if you would, tell the  
3 ladies and gentlemen of the jury what this is.

4 A. This is a cover letter that actually went out with  
5 every RFP and actually it's a generic, but it's actually  
6 customized for every group we sent it to.

7 Q. Okay. So, if you would, who is -- what's the date  
8 of this letter and to whom was it sent?

9 A. This one is dated November 19th, 2007; and it was  
10 sent to D. Bruce Sewell, S-E-W-E-L-L, the senior  
11 vice-president general counsel of Intel.

12 Q. Now, if you would, let's look at the first  
13 paragraph. Tell us generally -- you certainly don't need  
14 to read it word-for-word, but tell us what that paragraph  
15 is talking about and what you were telling Intel.

16 A. Well, it introduces BBN as, you know, a storied  
17 research and development company that, you know, we had  
18 held built the ARPANET which led to the Internet and we  
19 had done a lot of great work and these are all the  
20 different areas we've done all this research and  
21 development in.

22 Q. Okay. Now let's look at that next paragraph.  
23 What does it relate to?

24 A. Then it's talking about our 200 patents with many  
25 more pending, and it's talking about the categories of

1 patents that are in this RFP.

2 Q. So, the 200 or so patents we're talking about  
3 here, those are the patents in the bucket that you and  
4 your colleagues at BBN decided was best to try to sell or  
5 license; is that right?

6 A. Yes -- well, I don't know -- I mean, it says we  
7 built a portfolio of over 200. I don't think they were  
8 all up for sale so --

9 Q. Okay.

10 A. It's just the ones in the RFP.

11 Q. The ones that were attached.

12 Okay. Then if you would, let's look at the  
13 next paragraph, please, sir.

14 A. Okay. This is where we're talking about we're  
15 looking for proposals for license or sale of certain  
16 portions of our patent portfolio.

17 Q. Okay. If you look here, it says "a variety of  
18 compensation structures." What are you talking about in  
19 terms of compensation?

20 A. Well, we were looking for kind of an ongoing  
21 royalty in any case of any potential revenue that might  
22 be generated from a patent.

23 Q. Now, why was it important to BBN to have an  
24 ongoing source of income related to these patents?

25 A. Well, you know, we were trying to build value for

1 the venture capitalists; and, you know, it's good to  
2 build up regular recurring revenue as opposed to selling  
3 assets one time. That really doesn't build long-term  
4 value. If you keep selling off your buildings, you'll  
5 end up with no buildings. But if you have patents and  
6 you're licensing them and generating revenue every year  
7 from people's use of it, then that helps build up a  
8 recurring revenue stream which would, you know, help us  
9 grow.

10 Q. Now let's look at Plaintiff's Exhibit 39, please,  
11 sir --

12 MR. ALBRITTON: Actually before we move on, go  
13 back if you would, Mr. Seydewitz.

14 BY MR. ALBRITTON:

15 Q. If you would, Mr. Houh, look at page -- if you  
16 would look at the third page, down near the bottom. I  
17 don't have it marked on mine. I apologize. Okay.

18 MR. ALBRITTON: It's actually page 1 of 4,  
19 Mr. Seydewitz. It's Bates Number 004.

20 A. Yes. I'm here.

21 BY MR. ALBRITTON:

22 Q. Okay. Dr. Houh, if you would, look up from the  
23 bottom a little bit. Do you see two patents issued, one  
24 which is the '072 patent and one that is the '244 patent?  
25 Do you see that?

1 A. I do see that, yes.

2 Q. And those were specifically offered to license or  
3 sell to Intel?

4 A. That's right. They were included in the list and  
5 in the book.

6 Q. Now I'd like to direct your attention to  
7 Number 39, please, sir.

8 A. Okay.

9 Q. What is this, Dr. Houh?

10 A. This is a letter we received from Intel a few  
11 weeks later, addressed to my boss Alex; and it says that  
12 they received them and they are going to -- they're  
13 reviewing the matter.

14 Q. Thank you, sir.

15 Now if you would move to Plaintiff's Exhibit  
16 149, please, sir.

17 Do you see 149? I'm sorry. 149, please.

18 A. Okay.

19 Q. If you would, tell us what this is.

20 A. This is an e-mail that I received on January 17th  
21 about two months after we sent it out.

22 Q. What does it indicate?

23 A. It says that -- it basically says "thanks but no  
24 thanks"; and it was from Intel, a Brandon Antoni.

25 Q. Okay. And does it say anything about what Intel

1 had done?

2 A. It said, "We have reviewed these patents, and are  
3 deciding to decline your offer."

4 Q. Thank you.

5 Did BBN -- you talked about one of these  
6 licensing companies that you sent the RFP to. One of  
7 them was a company called Acacia. Did Acacia  
8 specifically negotiate with BBN concerning a number of  
9 patents including the patents that are in this case, the  
10 '072 patent and the '244 patent and then the related '102  
11 patent?

12 A. Yes.

13 Q. When BBN was negotiating with Acacia concerning  
14 those patents, what was the key feature of the proposed  
15 deal from BBN's perspective?

16 A. We were looking for an ongoing share of any  
17 ongoing licensing revenues.

18 Q. Did BBN, during the course of negotiations during  
19 this time frame with other companies, ever have any  
20 concerns expressed concerning BBN's prior ownership by  
21 Verizon as it relates to these patents?

22 A. Yes, they did.

23 Q. If you would, tell the members of the jury about  
24 that, please, sir.

25 A. So, because most or all of these patents -- almost

1 all probably -- were at one point owned by Verizon --  
2 Verizon is a very, very big company and sometimes they  
3 don't know what different parts of Verizon are doing and,  
4 so, even though we believed there were no other existing  
5 licenses to these patents that Verizon had granted  
6 anybody, we couldn't be sure and we couldn't actually  
7 confirm whether that was true or not with Verizon.

8 Q. So, was BBN able to promise to potential buyers  
9 that there were no other licenses?

10 A. No. We actually could not represent that there  
11 were no other existing licenses.

12 Q. Did that seem to have any impact on some of the  
13 companies BBN was negotiating with?

14 A. Yes. I think it did have an impact.

15 Q. How so?

16 A. Well, they were very concerned that, you know, if  
17 they bought or tried to license them, that they may be  
18 licensed a lot and people they approached wouldn't need a  
19 license because they had an existing one. So, that was a  
20 risk; and it was a concern for some of these companies  
21 eventually.

22 Q. Now, as it turns out, do you have any reason to  
23 believe that there was a license between Verizon and  
24 Intel?

25 A. No.

1 Q. Did BBN ultimately sell the patents that are at  
2 issue in this case -- the '072 patent, the '244 patent,  
3 and the related '102 patent -- to a company?

4 A. Yes.

5 Q. And what company did it sell -- to what company  
6 did BBN sell these patents?

7 A. It sold it to a company called "Stragent."

8 Q. Okay. Did BBN sell some other unrelated patents  
9 also to Stragent?

10 A. Yes, it did.

11 Q. Who were you and Mr. Laats primarily dealing with  
12 at Stragent?

13 A. We were dealing with a man named Kevin Zilka.

14 Q. And is Mr. Zilka seated here at counsel table?

15 A. Yes. That's Kevin.

16 Q. Up until recently have you seen him in a number of  
17 years?

18 A. No.

19 Q. Mr. Houh -- or Dr. Houh -- excuse me -- did you  
20 and Mr. Laats have many or few interactions or dealings  
21 with Mr. Zilka?

22 A. Well, we had some e-mail exchanges, phone calls.  
23 I did a lot of the legwork. Alex was involved at the  
24 end, and we actually went to visit Mr. Zilka.

25 Q. Where did you visit with Mr. Zilka?

1 A. California.

2 Q. Okay. If you would, turn to Plaintiff's Exhibit  
3 149. Is this the --

4 MR. ALBRITTON: And turn to page 2, please,  
5 Mr. Seydewitz.

6 BY MR. ALBRITTON:

7 Q. Is this the Patent Purchase Agreement between BBN  
8 and Stragent?

9 A. Yes.

10 Q. Thank you.

11 In this Patent Purchase Agreement does it set  
12 out how BBN was going to be compensated for the sale of  
13 these patents?

14 MR. ALBRITTON: If you would, Mr. Seydewitz,  
15 let's go to 13760.

16 BY MR. ALBRITTON:

17 Q. That's page 2 of the attachment, Dr. Houh.

18 A. Yes. I see it.

19 Q. Do you see something entitled "Payment"?

20 A. Yes.

21 Q. All right. And then you've got an "Initial  
22 Payment," 4.1. You've got an "Annual Minimum Payment,"  
23 4.2.

24 MR. ALBRITTON: And then if you would,  
25 Mr. Seydewitz, go to the next page.

1 BY MR. ALBRITTON:

2 Q. And then you've got something called "Profit  
3 share," correct?

4 A. Yes.

5 Q. Of those three components, what was most critical  
6 to BBN?

7 A. Well, the most important thing was this profit  
8 sharing percentage so that we could grow our annual  
9 revenues.

10 Q. And what is the profit share percentage?

11 A. I'm looking for it in this particular section, but  
12 I think it's 15 percent.

13 Q. Okay. 15 percent.

14 In addition to the profit share, was there any  
15 other financial terms of this agreement between BBN and  
16 Stragent?

17 A. Yes. There was an ongoing minimum every year.

18 Q. Okay. And anything else?

19 A. There was also an up-front payment.

20 Q. And how much was that up-front payment?

21 A. I think it was \$100,000 for this family.

22 Q. Now, did BBN believe that it was selling these  
23 patents to Stragent merely for a hundred-thousand-dollar  
24 payment?

25 A. No. It was the ongoing participation and

1 licensing fees generated.

2 Q. At the time BBN sold these patents -- the '072,  
3 the '244, and then the related '102 to Stragent -- did  
4 BBN believe or know that Intel was infringing these  
5 patents in any way?

6 A. No.

7 Q. Had BBN undertaken any formal investigation or  
8 study to determine whether or not any Intel products were  
9 infringing these patents?

10 A. No.

11 Q. Had anybody internal to BBN expressed their  
12 suspicions about some Intel products?

13 A. Yes.

14 Q. Tell the ladies and gentlemen of the jury about  
15 that.

16 A. So, the inventor, Walter Milliken, seemed to  
17 believe that Intel was already infringing on the patent  
18 when it issued.

19 Q. Did Mr. Milliken show you any specific information  
20 or any detailed information that led you to believe,  
21 Dr. Houh, that, in fact, Intel was using these patents?

22 A. No. He didn't have any detailed information.

23 Q. Now, in order to determine whether Intel is  
24 actually -- or would have been actually infringing these  
25 patents, what would you have had to have seen?

1 A. You know, I think in this particular case you  
2 might have had to actually look at the circuitry or look  
3 at some of the source code that generated the circuit and  
4 the hardware.

5 Q. That information -- source code, for instance, or  
6 detailed circuit drawings, are those things that are  
7 publicly available?

8 A. No. Not to my knowledge, no.

9 Q. Dr. Houh, do you currently work for BBN?

10 A. No.

11 Q. Do you have any sort of financial stake in any  
12 recovery in this case?

13 A. No, I don't.

14 Q. Do you own any BBN stock?

15 A. No, or Raytheon. I don't own either.

16 Q. Okay. Do you actually -- do you own some stock  
17 otherwise in your investment portfolio?

18 A. Yes.

19 Q. Do you own any Intel stock?

20 A. I do.

21 Q. So, if you ranked all the companies in which you  
22 own stock from the largest -- that's the company you had  
23 the most stock in -- where would Intel lie?

24 A. It's the second. Second largest investment.

25 MR. ALBRITTON: Pass the witness.

1 MR. BURMAN: Your Honor, if we could approach  
2 to pass out some new notebooks.

3 THE COURT: Sure.

4 MR. BURMAN: Thank you.

5 THE COURT: You may proceed.

6 CROSS-EXAMINATION OF HENRY HOUH

7 BY MR. BURMAN:

8 Q. Mr. Houh, I don't think we've met before. My name  
9 is David Burman. Nice to meet you.

10 A. Nice to meet you, Mr. Burman.

11 Q. I've already botched a couple of names today; so,  
12 if I botch yours, I'll apologize now.

13 A. It's okay. Everyone does.

14 Q. Thank you.

15 Now, you identify yourself on your Internet  
16 *LinkedIn* business listing as an expert witness in  
17 intellectual property litigations at various law firms,  
18 correct?

19 A. Yes. That's one of the things that's on my  
20 *LinkedIn* page.

21 Q. Actually that's the only thing that you put on to  
22 describe your position after your name, correct?

23 A. I don't think so. I'm pretty sure that I had my  
24 H3XL and Einstein's Workshop thing there, too.

25 Q. You mentioned the H3XL as current along with

1 various law firms, correct?

2 A. Yes. That's something different than my expert  
3 witness work, but that's where I spend most of my time  
4 actually.

5 Q. And in the summary you don't describe that at all.

6 A. I thought that I did, but I -- sometimes *LinkedIn*  
7 hides certain parts of profiles for people who aren't  
8 paying.

9 Q. And you say in your summary that -- which you  
10 updated this year, correct?

11 A. I don't recall when I last updated it, but I -- I  
12 just don't recall when I last updated it.

13 Q. Well, you say for the position of "expert witness  
14 in intellectual property litigations at various law  
15 firms, 2006 - present (8 years)." So, I assume you  
16 updated it in 2014.

17 A. Well, I think I put "present" unless I change it.  
18 I wouldn't change -- no. Unless I stop it, I wouldn't  
19 change it. It's always been present.

20 Q. Okay. But the eight years, you would have had to  
21 change.

22 A. I think *LinkedIn* does that automatically because  
23 it knows what today is and knows when my initial start  
24 date was. So, I wouldn't have to change that, no.

25 Q. You describe yourself as a "trial tested lead

1 expert witness on major patent cases, two of which have  
2 gone to trial," correct?

3 A. That's actually not -- that's not been updated.  
4 I've been to trial a few more times now.

5 Q. Okay. And that you work for plaintiffs, correct?

6 A. Sir, I didn't hear that.

7 Q. It says you work for plaintiffs, correct?

8 A. I have worked for plaintiffs.

9 Q. Well, it doesn't say you work for anyone but  
10 plaintiffs, does it?

11 A. That's probably just an omission, but I work for  
12 plaintiffs and defendants.

13 Q. And it says your areas of expertise include  
14 networking, network processors, Internet protocol,  
15 optical networking, telecommunications, voice-over-IP,  
16 streaming media, telecom testing, all sorts of network  
17 things, correct?

18 A. Yeah, if that's what it says. That sounds right.

19 Q. Okay. Now, you indicated that there were a  
20 variety of buckets that you put these patents in and that  
21 the last one was narrow patents; is that correct?

22 A. That was what was left over, but that was in one  
23 of the buckets I described.

24 Q. Okay. And, in fact, it was more than narrow  
25 patents. There were some cookie patents, weren't there?

1 A. I would have described some of them as kind of  
2 "cookie" actually.

3 Q. I mean, Verizon had an incentive program that  
4 caused people to apply for patents when they wouldn't  
5 really be quality patents, correct?

6 A. Well, Verizon did some evaluation on all of those,  
7 I assume; and they probably wouldn't have just filed it  
8 for, you know -- I don't know how they valued it, but I  
9 don't think they filed every single one that the  
10 inventors put in.

11 Q. Correct. But you found some when you got there  
12 that had been filed and continued and were not quality  
13 patents, correct?

14 A. Well, they saw a very narrow problem that we  
15 didn't think was a big market.

16 Q. Some were narrow, but some were also just bad.

17 A. Cookie or bad or they solved a problem. I mean,  
18 inventors actually think about things and try to solve  
19 some problems and we had some very active patent files  
20 within BBN.

21 Q. And one of the things that you looked at in  
22 deciding whether once you got in charge to continue a  
23 patent, that is to continue to pay the fees and to try to  
24 persuade the Patent Office to move forward, was whether  
25 there was some argument that somebody else was

1 infringing, correct?

2 A. Well, I think we all made independent -- there  
3 were a number of people who kind of did that on their  
4 own; but it was really we looked at what the technology,  
5 what the patented claimed invention was and whether that  
6 was valuable.

7 Q. And whether you thought someone might be  
8 infringing it.

9 A. I think for potentially -- you know, some people  
10 might have made some -- might have swayed that but we  
11 really looked at all of the patents and we really looked  
12 at what problem it was solving. You know, this is how I  
13 looked at it, if it was a big market and whether it was a  
14 problem we thought lots of people would want to solve in  
15 the future using our methods.

16 Q. Okay. Now, Mr. Milliken, Walter Milliken, the  
17 inventor of the purported patents, he actually suggested,  
18 when you were going through this process, that maybe  
19 these were patents you should let die, didn't he?

20 A. He -- well, I don't know what you mean by "let  
21 die," no. Certainly in terms of abandoning the patent  
22 that got issued, no, that's not what he suggested.

23 Q. Well, he suggested not continuing to pay; and that  
24 would have caused it to be abandoned.

25 A. I think the issue there was that sometimes when

1 you receive a Notice of Allowance, that you can actually  
2 file a continuation which is a whole separate patent  
3 application itself; and I think he felt that because  
4 there was no value, because we weren't already out there  
5 trying to license it from Intel, that if we're not going  
6 to do that, then we shouldn't file a continuation. But  
7 that wasn't the case actually. You know, he was very  
8 eager to get on with things; so, I think it's for a  
9 different set of reasons than what you are implying.

10 Q. Okay. And you told him that "If we think we can  
11 make a case against Intel, we should file a  
12 continuation."

13 A. I may have said that in e-mail, but it was  
14 really -- at the time he wrote that e-mail, we were still  
15 trying to negotiate that encumbrance issue with Verizon.

16 Q. And, in fact, you told him "If we're going to  
17 continue -- if we're going to continue to pursue this  
18 patent, we ought to write it so the claims more directly  
19 read on network processors like the Intel processor,"  
20 didn't you?

21 A. I don't recall saying that specifically, but it  
22 may have been in the e-mail. But a continuation is a  
23 whole new separate patent filing.

24 Q. And you wanted to try to cover Intel based on what  
25 he had found by looking at these Intel network

1 processors, not anything involved in this case but the  
2 network processors. You wanted it written to cover  
3 network processing.

4 A. Well, in a continuation you can't actually change  
5 the patent specification. You can only rewrite different  
6 claims that are supported by the specification. So, if  
7 we maybe claimed it in a way that we could have claimed a  
8 little better and support it in the written specification  
9 of the patent itself, I think that would have been a good  
10 thing to do.

11 Q. And he told you not just that he had -- he thought  
12 the Intel network processors might be infringing but they  
13 were clearly infringing, correct?

14 A. That's probably what he told me but based on my  
15 experience with this other case, a lot of work goes into  
16 the analysis for infringement and, you know, Walter  
17 wouldn't have shown me any of that.

18 Q. Well, he did show you some documentation he had  
19 found at the Intel network processors which he claimed  
20 suggested that they were using the same technology as the  
21 patent, correct?

22 A. I think that was what he based his -- but I know  
23 what it would take, and showing a few diagrams  
24 wouldn't -- you know, that's not the right kind of  
25 analysis so...

1 Q. So, you would need source code and things that  
2 aren't publicly available, correct?

3 A. Well, depending on what was claimed, but I think  
4 in this particular case it was very hard to tell from  
5 public information.

6 Q. What was the source code and public information  
7 that Stragent had when they filed this lawsuit?

8 A. I don't know. I don't know what they had, but  
9 I -- they probably didn't have it. They probably didn't  
10 have the confidential information.

11 Q. Okay. I believe you're right.

12 Now, if you could look at plaintiff's  
13 exhibit -- that's in the notebook; they're marked with  
14 blue so that you can tell the plaintiff's with the blue  
15 "P" -- 155 if you would.

16 A. Okay.

17 Q. And this is an example of one of the RFPs; and  
18 this one happened to be sent to IBM, correct?

19 A. Yes.

20 Q. And if you go to the next page, Request For  
21 Proposal November 19, 2007. That's actually the date of  
22 what you sent to Intel, correct?

23 A. I think we put all of them in the mail on the same  
24 day.

25 Q. Okay. And, you know, in the next four pages are

1 the various subject matters of the patents, correct?

2 A. Yes. They're the groupings and a listing of each  
3 of the patents in the RFP.

4 Q. And you mentioned that one of the groupings was  
5 computing. Can you show me where the computing grouping  
6 is?

7 A. Well, I guess I must have misremembered; but I  
8 can -- it's enhanced displays, network security,  
9 networks, other, physical sciences, speech and language  
10 processing, wireless data networks.

11 Q. So, under networks there's about 20, 22 patents,  
12 correct?

13 A. I don't know the exact number, but there's clearly  
14 more than a dozen.

15 Q. And as Mr. Albritton pointed out, the two that are  
16 involved here are near the bottom.

17 A. Of that page, yes.

18 Q. Correct. And there's a few more on the next page.

19 A. That's right. There's one more of the networks on  
20 the next page.

21 Q. Okay. And they're not in alphabetical order, are  
22 they?

23 A. The categories appear to be in alphabetical order.

24 Q. But the patents there, they're not in alphabetical  
25 order. They're not in numeric order. They're not in the

1 patent number order.

2 A. Yeah. There doesn't appear to be -- there are  
3 some high number patents and lower number patents and  
4 they go up again; so, I don't know what order they're in.

5 Q. They probably were left in the quality order that  
6 had been part of your original work in the months leading  
7 up to that; isn't that right?

8 A. No. I don't think that would have been the case.  
9 It may have been based on our internal docket numbers  
10 which wouldn't have been meaningful to anybody else which  
11 would have approximated time.

12 Q. Well, you did have a numerical system for rating  
13 the quality or the value of the patents, didn't you?

14 A. We did an evaluation using numerical values.

15 Q. And you hid that field or deleted it when you sent  
16 this spreadsheet out to potential buyers?

17 A. Oh, I don't think we deliberately hid it. It's  
18 just that it was used to kind of figure out which ones  
19 should be on this list.

20 Q. I didn't mean to suggest there was anything  
21 nefarious about that. It's just you don't tell someone  
22 that you're going to negotiate with what your hand is,  
23 correct?

24 A. Yeah, sure.

25 Q. But you did tell some people, including Acacia,

1 that you thought Intel infringed, didn't you? You told  
2 them that.

3 A. I tried to use wording that we may have the  
4 belief. I try not to use the wording that they do.

5 Q. And you were very careful not to hint to Intel  
6 that you thought Intel was infringing with its network  
7 processor buses, again not the products involved here but  
8 the products that Mr. Stark and other people may have --

9 A. Yeah. We were afraid that if we hinted that, that  
10 they could countersue us -- or sue us actually and then  
11 file a declaratory judgment and not be able to control  
12 our litigation costs.

13 Q. Because they would look at what they make, they  
14 would look at your patents, and they would feel  
15 honor-bound to do something about it, to say "We ought to  
16 get this resolved in a court of law and find out who is  
17 right and who is wrong," correct?

18 A. Oh, I don't know what the reasoning at Intel would  
19 have been.

20 Q. Okay. But you were afraid that would be their  
21 reasoning and that they would go to court and ask a court  
22 to resolve the issue.

23 A. I think there's a -- you know, if you're sending  
24 out licensing letters, that's some reaction that some  
25 companies or maybe many companies might make actually;

1 and, so, we were worried about that. We didn't want to  
2 have a lot of declaratory judgment lawsuits filed against  
3 us.

4 Q. And actually the way -- the reason Intel was  
5 mainly on the list was because it was a big company and  
6 it might be interested in buying patents and, so, you  
7 were sending this out to a lot of big companies.

8 A. Well, yes. But Intel did a lot of computer  
9 networking.

10 Q. Well, actually it turned out that they had sold  
11 their networking business a year before you sent the  
12 letter; isn't that true?

13 A. I don't recall. I don't know. They were a big  
14 company, but I thought they had a big networking division  
15 as well.

16 Q. Now, why don't you look at Plaintiff's Exhibit 48.  
17 That's actually the letter to Intel; so, you can look in  
18 either notebook for that. And again it would be the blue  
19 "P," 48.

20 A. Thank you. Yes, I see it.

21 Q. Okay. Now, the reason you gave categories was to  
22 make it easy for the people receiving this letter to  
23 determine whether they might have interest, whether it  
24 related to what they should think about, correct?

25 A. That was part of the reason. If we bundled them

1 all together in one big list, it would have been a lot of  
2 work to sort things like quantum cryptography.

3 Q. But you didn't mention microprocessors,  
4 microprocessor design, servers. You didn't mention --  
5 those weren't categories that you were offering them.

6 A. No. But they could have looked through the list  
7 of four pages and read the titles.

8 Q. Well, you actually emphasized in the cover letter  
9 and in the titles, the category titles, "networks,"  
10 correct?

11 A. Yes.

12 Q. Okay. And you never suggested to them -- orally,  
13 e-mail, letter -- that any patent on this list related to  
14 the microprocessors or server processors.

15 A. No, we didn't.

16 Q. And you said it took them two months to respond.  
17 Didn't you imply that?

18 A. It was about two months from the day we sent it  
19 but I don't know when they started to review it, but it  
20 took -- you know, the dates are on the letters.

21 Q. Okay. And didn't your letter invite them to  
22 respond by the date they responded? If you go to the  
23 next-to-the-last paragraph on Exhibit 48 --

24 A. Yes. I see it. It asks for a response by  
25 January 18th.

1 Q. And when did you get the response?

2 A. January 17th.

3 Q. So, there's nothing nefarious in the fact that  
4 they did what you asked them to do unless you were  
5 setting them up?

6 A. Oh, I didn't say there was anything nefarious  
7 about that.

8 Q. Okay. Maybe Mr. Albritton suggested that, but I  
9 apologize if it wasn't you.

10 And when you got their response, you just  
11 moved on, correct? You didn't threaten them. You didn't  
12 respond back to them. You didn't say, "What did you do  
13 to look into this?"

14 A. No, we didn't follow up with Intel.

15 Q. And you never checked to see whether the Intel  
16 network processors might be prior invalidating art or  
17 technology that would invalidate Mr. Clark Milliken's  
18 patents, did you?

19 A. Well, again we didn't do any analysis.

20 Q. Right. And you didn't expect Intel to take  
21 150-whatever list of patents and try to go through every  
22 one of their products and try to find out if somehow  
23 there might be some correlation, did you?

24 A. Well, we told -- they had taken a serious look at  
25 it.

1 Q. But you weren't going to take a serious look at  
2 what Mr. Milliken had done to see if he might have been  
3 using their prior art?

4 A. Well, what I meant was that they would have taken  
5 a serious look at what they might have been interested  
6 in.

7 Q. From a business perspective they might have been  
8 interested in licenses.

9 Now, you said some companies expressed some  
10 interest. Acacia, I think, was one. They're similar to  
11 Stragent, aren't they, Acacia?

12 A. I think they may help -- they may have some  
13 similarities, but I think they also have a program that  
14 helps the owner license them.

15 Q. But no one other than Stragent actually ended up  
16 deciding to buy even just a few of the patents on your  
17 long list; isn't that correct?

18 A. That's right.

19 Q. And it was for much less than you wanted.

20 A. Well, in terms of the percentage, we have a  
21 starting point. We didn't think we would get the  
22 starting point necessarily. It was a starting point for  
23 negotiations. So, I don't think I would characterize it  
24 as getting much less than we wanted.

25 Q. You didn't have multiple offers for these patents

1 or for any of the patents on the list.

2 A. Well, not quite. I wouldn't characterize it as  
3 that. We did have multiple offers expressed, but we  
4 weren't able to close some of the other offers.

5 Q. And others at BBN, at least perhaps even  
6 Mr. Stephen Milligan, would have preferred not to sell to  
7 someone who would get value only by threatening and suing  
8 like Stragent; isn't that true?

9 A. I don't know what Stephen thought.

10 Q. But there were people at BBN who didn't feel good  
11 about -- if they weren't willing to stand up in court, as  
12 you said they weren't -- getting 15 percent of what  
13 someone would receive who would be willing to go to court  
14 without looking at the source code and the like.

15 A. Well, I think that was -- it's risky. That was  
16 the issue. You know, if a company like BBN spent a big  
17 chunk of its profits on litigation, that wasn't exactly  
18 the strategy that the senior management was looking to to  
19 use for the business.

20 Q. Okay. Now if you could look at Defendant's  
21 Exhibit 150 this time, and I think that is a red towards  
22 the back half.

23 Do you see that document, and do you remember  
24 it from back in those days?

25 A. Yes. It does look familiar.

1 Q. Okay. And I apologize it's a little chunked up  
2 because we had to take some pages out; so, it doesn't  
3 flow quite. But if you could go to the second page of  
4 the document, "Introduction to Stragent." Do you see  
5 that?

6 A. I do, yes.

7 Q. And one of the things that they wanted to talk to  
8 you about is the benefits of working with Stragent. Do  
9 you see that?

10 A. Yes.

11 Q. Bullet Number 46789?

12 A. I do.

13 Q. And then Bullet Number 6, "Stragent's Strategy  
14 Going Forward," do you see that?

15 A. Yes.

16 Q. And if you would turn to -- I believe it's page 4  
17 of what we have, page 19 of the document that you've  
18 actually got called "Future Opportunities." "Stragent's  
19 biggest value-add is its ability to identify value in  
20 patents." Do you see that?

21 A. I do.

22 Q. And you understood that what that meant was that  
23 Stragent would be creative. It would find ways to read  
24 patents that you or Intel or other people hadn't  
25 anticipated and to then make something out of that and

1 try to get something paid to them; isn't that right?

2 A. Could you repeat that, please? I was just trying  
3 to figure out --

4 Q. That was --

5 A. Okay.

6 Q. That was a terrible bunch of questions put  
7 together, and I apologize.

8 But you knew what that meant is that they were  
9 going to be creative, right?

10 A. I don't think that's -- I don't think it's about  
11 creativity there.

12 Q. Well, how would they add value compared to other  
13 people unless they could push and pull the words and push  
14 and pull the various products and find a match that  
15 hadn't occurred to other people?

16 A. I don't think it's necessary to do a push and  
17 pull. I think it's -- you know, if you look in places  
18 where the patents claim and you can see that there might  
19 be some potential infringement, I think it's applying the  
20 claims that were in the patent.

21 Q. But they stand out, they say, from what, you know,  
22 people like you or Intel can do, correct?

23 A. Well, I mean, it simply says "identify value in  
24 patents"; and we know that they did some work in  
25 identifying patents that they were interested in.

1 Q. I mean, they applied these patents outside of the  
2 network processing field to microprocessors and surprised  
3 everybody, correct?

4 A. Well, my understanding is that the claims --

5 MR. ALBRITTON: Your Honor, I'm going to  
6 object. As the court knows, these claims are not limited  
7 to network processors; and he continues to suggest that.  
8 The claims say nothing about network processors; and, so,  
9 we would object.

10 THE COURT: Overruled.

11 BY MR. BURMAN:

12 Q. Mr. Houh, one other thing that they can do that  
13 BBN wasn't able to do is to threaten litigation, correct?

14 A. BBN did not want to do that.

15 Q. And, in fact, sometimes just bringing litigation  
16 is enough to extract settlements from companies that are  
17 willing to pay to avoid defense costs, pay something just  
18 to avoid the cost -- as you pointed out, the very  
19 expensive cost of patent litigation, correct?

20 A. I wouldn't describe it with those words, but that  
21 is sometimes what happens.

22 Q. Okay. And as you're -- you're aware that that  
23 happened in this case with the companies Lattice and  
24 Freescale, correct?

25 A. I don't know about those companies.

1 Q. They were willing to pay something to Stragent as  
2 long as it was less than what it would cost to litigate  
3 all the way to this stage, correct?

4 A. I don't know what those companies think.

5 Q. But what you do know is that Intel isn't willing,  
6 correct?

7 A. Up to this minute, I think that's true.

8 Q. Thank you.

9 THE COURT: Redirect?

10 MR. ALBRITTON: Thank you, your Honor.

11 REDIRECT EXAMINATION OF HENRY HOUH

12 BY MR. ALBRITTON:

13 Q. Let me ask you this, Dr. Houh. The processors  
14 that are involved in this case, do you know that the  
15 first one wasn't even sold until 2009?

16 A. I didn't know that.

17 Q. It would be hard to write patent claims in 2006  
18 that cover a project or a product that doesn't come out  
19 until three years later. Would you agree with that?

20 A. I'd generally agree, although a good inventor  
21 tries to anticipate what's happening in the market.

22 Q. Mr. Burman asked you questions about Stragent's  
23 decision and what they relied on to bring this case. Do  
24 you have any knowledge about that at all?

25 A. No.

1 Q. He asked you all these questions about being an  
2 expert witness. Are you an expert witness in this case?

3 A. No.

4 Q. Does that have anything to do with what you're  
5 doing here today?

6 A. No.

7 Q. Let's look at Plaintiff's Exhibit 1, please, sir.

8 MR. ALBRITTON: If you would, go to claim 12.

9 Your Honor, may I approach my table?

10 BY MR. ALBRITTON:

11 Q. If you look at claim 12 and claim 16, do either of  
12 those claims -- those are the claims that are at issue in  
13 this case, I'll represent to you. Do they say anything  
14 about network processors?

15 A. No. It just says "a device."

16 Q. And the device can be many things other than a  
17 network processor.

18 A. Yes.

19 Q. And the device of those two claims are described  
20 by the actual limitations of those claims, correct?

21 A. That's correct.

22 Q. And do any of those limitations say anything about  
23 network processors, of claims 12 and 16?

24 A. No, they don't.

25 MR. ALBRITTON: If you would, Mr. Seydewitz,

1 go to Column Number 2 under the "Detailed Description."

2 If you would, look at about line 56.

3 BY MR. ALBRITTON:

4 Q. Can you read that where it starts out with the  
5 word "also"?

6 A. You want me to read that?

7 Q. Yes, sir.

8 A. Yeah. It says, "Also, the following detailed  
9 description does not limit the invention. Instead, the  
10 scope of the invention is defined by the appended claims  
11 and equivalents."

12 Q. Then it goes on in the next line and talks about  
13 one embodiment or one potential embodiment of the claims;  
14 is that right?

15 A. Yes.

16 Q. So, these claims could cover network processors,  
17 but they can also cover things like server processors so  
18 long as all of the elements of the claim are met by the  
19 products.

20 A. It's a device claim.

21 Q. Mr. Burman asked you about the ranking, the  
22 numerical ranking of these patents; and he asked you, he  
23 said were these listed in that RFP and -- in rank order.  
24 Do you remember those questions?

25 A. Yes.

1 Q. Now, what was the scale?

2 A. We used a scale of 1 to 5.

3 Q. And what was the highest?

4 A. 5 was the highest.

5 Q. Okay. And in order to get a 5, would each and  
6 every person on the committee, after having reviewed the  
7 patent and reviewed the patent claims, have to give it a  
8 five?

9 A. Well, not only that, the chief scientist of that  
10 division, the department head, and the inventor would  
11 also participate in that ranking and would have also had  
12 to give it a 5.

13 Q. This '072 patent that's at issue in this very  
14 case, what was its ranking?

15 A. I think it was a 5.

16 MR. ALBRITTON: Pass the witness, your Honor.

17 THE COURT: Anything further?

18 MR. BURMAN: Nothing further, your Honor.

19 THE COURT: Okay. Is there any reason not to  
20 excuse the witness?

21 MR. ALBRITTON: No, your Honor.

22 MR. BURMAN: No, your Honor.

23 THE COURT: Okay. Mr. Houh, thank you. You  
24 are excused.

25 THE WITNESS: Thank you, your Honor.

1 THE COURT: Excuse me, Mr. Houh. I'm reminded  
2 that we have a procedure here where we allow the jury to  
3 ask questions, and I'd forgotten to do that in this case.

4 Would the jury please pass your forms.

5 Okay. The jury had no questions; so, you are  
6 excused.

7 THE WITNESS: Thank you, your Honor.

8 THE COURT: Okay. Mr. Albritton, why don't  
9 you call your next witness.

10 MR. ALBRITTON: Thank you, your Honor. We  
11 will call Dana Hayter, who is an Intel employee, via  
12 deposition. The total time, your Honor, is 21 minutes.  
13 Nineteen minutes to the plaintiff and two minutes to the  
14 defendant.

15 DEPOSITION TESTIMONY OF DANA HAYTER

16 THE VIDEOGRAPHER: This marks the beginning of  
17 Videotape 1 in the deposition of Dana Hayter taken on  
18 behalf of plaintiff in the matter of *Stragent, LLC,*  
19 *versus Intel Corporation*, filed in United States District  
20 Court, Eastern District of Texas, Tyler Division, Civil  
21 Action Number 6:11cv421.

22 Q. Also, we're here under oath testifying just  
23 exactly as if you were in Tyler, Texas, testifying in  
24 front of a jury. Do you understand that?

25 A. Yes.

1 Q. And, so, you understand you're here to testify on  
2 behalf of the corporation?

3 A. Yes.

4 Q. Are you a lawyer, Mr. Hayter?

5 A. Yes.

6 Q. So, you've been at Intel about nine years?

7 A. Yes.

8 Q. What's your title?

9 A. Associate general counsel, technology licensing.

10 Q. Well, when Intel negotiates patent licenses, it  
11 engages in dialogue with the other side and says, "You  
12 know what? We don't use this invention. We don't  
13 practice it. We do it in a different way," right?

14 A. I'm trying to think back in the negotiations I'm  
15 aware of, whether Intel has used that specific language  
16 or representatives of Intel have used it. I certainly  
17 haven't used language that way. As I said, the way I  
18 think about this is infringe has -- is a legal conclusion  
19 and let's talk about what the probabilities are and what  
20 the right transactional approach to mitigating that  
21 probability on either side might be.

22 I can't definitively say no one from Intel in  
23 a negotiation has ever used that language but in the  
24 negotiations in which I've taken part, I have not used it  
25 and I'm not aware of any specific instance where someone

1 has.

2 Q. So, what is Intel's general corporate policy in  
3 performing patent searches prior to developing a new  
4 product?

5 A. Well, as we've discussed, Intel respects other  
6 people's intellectual property; and if someone brings a  
7 patent to our attention, we look at it in good faith.

8 And I think, as I mentioned, there are  
9 literally millions of patents in the general technical  
10 art in which Intel conducts its activities; and there are  
11 tens of thousands of product features in Intel products.  
12 So, for that reason, it's simply impractical for Intel to  
13 ask a patent lawyer to go out and look at every one of  
14 the millions of patents that might relate to something  
15 Intel wants to incorporate into a product or change in a  
16 feature in a product every time it wants to do that.

17 Q. And did Intel undertake any searches to determine  
18 if an Intel product implementing QPI with 8-bit or 16-bit  
19 rolling CRC functionality would infringe a third party's  
20 patent?

21 I'm not asking about with respect to this  
22 lawsuit.

23 A. With that qualification, I would say I'm not aware  
24 of any such patent search done.

25 Q. Let me ask you this: When did Intel first become

1 aware of Intel's patents -- I'm sorry -- Stragent's  
2 patents; that is, the '072 patent and the '244 patent?

3 A. A company named BBN included them in a 75-ish-long  
4 patent list with a letter asking if we wanted to buy  
5 them.

6 Q. When was that?

7 A. 2000 -- sometime between 2007 and 2009. I forget  
8 exactly when, though.

9 Q. I'm going to hand you what we're going to mark as  
10 Exhibit Number 22; and that is a letter that came from  
11 the files of Intel, correct?

12 A. It would appear so. It has the general counsel's  
13 stamp on it in terms of it was received by his office.

14 Q. So, this was addressed to Bruce Sewell who at that  
15 time was general counsel of Intel, correct?

16 A. Yes.

17 Q. And then it's stamped "Received, Bruce Sewell,  
18 November" -- it looks like "26, 2007," correct?

19 A. Yes. I think that's the date.

20 Q. And then it's got a handwritten note on it. It  
21 says, "Please see me, Dave." Do you see that?

22 A. I think that's what it says, yeah.

23 Q. And that's a note written by somebody at Intel.  
24 That note wasn't written on this letter when it was sent  
25 from BBN, correct?

1 A. I don't know, but I think it's likely the case.

2 Q. Okay. Now, whose handwriting is that?

3 A. I don't know.

4 Q. Who is Dave?

5 A. I'm -- I don't know for sure, but the chief patent  
6 counsel's name is Dave Simon -- or was at the time Dave  
7 Simon.

8 My interpretation of the note was Bruce was  
9 writing a note, "Please see me, Dave," about the letter.

10 Q. Okay. So, that's likely a handwritten note from  
11 Bruce Sewell to Dave Simon, the chief patent counsel?

12 A. That was my interpretation.

13 Q. This goes on and says that "the enclosed packet  
14 summarizes the BBN patents that are open for  
15 consideration." Do you see that?

16 A. I see that line in the letter, yes.

17 Q. It also asks for a letter of interest by January  
18 the 18th. Do you see that?

19 A. I see the next line in the letter.

20 Q. Also in that third paragraph, it says, "We are  
21 seeking proposals for the license or sale of certain  
22 portions of our patent portfolios."

23 A. I see that line.

24 Q. And it also says, "Offers to license or purchase  
25 may be for individual patents, one or more clusters of

1 patents, or our entire portfolio." Do you see that?

2 A. I see that line.

3 Q. There is an exhibit attached. It's -- the first  
4 page says page 1 of 4, the second page in this  
5 exhibit says page 3 of 4, and the third page in the  
6 exhibit says page 4 of 4. Do you see that?

7 A. Yes, I do.

8 Q. What happened to page 2 of 4?

9 A. I don't know.

10 Q. On page 1, if you would count up --

11 A. I don't know if there was actually a page 2 in the  
12 letter we got. I just don't know one way or the other.

13 Q. Okay. If you would count up four from the bottom,  
14 it says --

15 A. Which page are we on?

16 Q. Page 1 of 4, which is Bates Number '004.

17 A. Uh-huh.

18 Q. Patent Number 7,028,244. Do you see that?

19 A. Yes, I do.

20 Q. The inventor's name is Walter Milliken, correct?

21 A. It says first -- he's in a -- he's in a box with  
22 the column heading that says "First Inventor."

23 Q. All right. And the one above that is 6,848,072.  
24 Do you see that?

25 A. Yes, I do.

1 Q. And do you know those are the two asserted patents  
2 in this case?

3 A. Yes.

4 Q. And you know that this other patent, this allowed  
5 application that ends in '188 that's under the  
6 '244 patent, that that was originally asserted in this  
7 case as well?

8 A. Yes. No longer, is my understanding.

9 Q. When this went to Dave Simon, what did Dave Simon  
10 do?

11 A. This is my understanding of what happened. At the  
12 time Intel had a process referred to as "IP3." As you  
13 can imagine, Intel gets lots of these kinds of letters,  
14 tens a month. And, so, there is a group of people who  
15 administer a process to evaluate them, including lawyers  
16 and non-lawyers.

17 At the time it was run under the  
18 supervision -- direct supervision of a lawyer named Brad  
19 Greenwald; and he reported to the chief patent counsel,  
20 David Simon. It was a program managed by -- in terms of  
21 running the meetings and running the process -- by a  
22 woman named Pam Hays. And one of the folks who reported  
23 to her is named Brandon Antoni.

24 So, this went through the IP3 process. Every  
25 week they would meet. They would look at any letters

1 they had like this. Brad Greenwald would have looked at  
2 them and headed the meeting, and they would decide which  
3 of the letters to give to patent lawyers to evaluate.

4 And then at subsequent meetings, they would  
5 check on the progress of the evaluation and ultimate  
6 legal advice and then take whatever next steps were  
7 indicated by that advice.

8 Q. So, in this case this patent came in. It went to  
9 Dave Simon.

10 A. This letter came in.

11 Q. Yeah. I'm sorry. I misspoke. And then to whom  
12 did it go?

13 A. It went into the process. I don't know who he  
14 gave it to. I don't know if he gave it to -- next gave  
15 the letter to Brad. That would probably be his next  
16 step, but I don't -- in my interviews I wasn't able to  
17 determine that, you know, physical transfer.

18 But what I do know is it went into the  
19 process. It was assigned to a patent attorney named  
20 Larry Bennett. Larry Bennett remembers doing the  
21 analysis, remembers having -- doing some of the analysis  
22 over the holiday break and difficulties getting ahold of  
23 people to talk to with questions.

24 Q. What sort of people? Non-lawyers?

25 A. Yeah. He might, you know, ask, you know, an

1 engineer for information about Intel's products so that  
2 he could provide legal advice to the company.

3 Q. And, so, he was getting engineers involved to look  
4 at Intel's products with respect to these patents?

5 A. I know he got other people, and I wouldn't be  
6 surprised if some of the people he talked to were  
7 engineers. As I said, a patent attorney may ask for  
8 technical information from an engineer as part of  
9 information he uses to render legal advice to the  
10 company.

11 You know, as I was saying, he remembers  
12 conducting the analysis. He remembers doing it over the  
13 holiday period. He doesn't have any memory of the  
14 substantive analysis. That was not something that was  
15 remarkable in his mind. And then subsequently Intel sent  
16 an e-mail out -- Brandon Antoni sent an e-mail out  
17 saying, in essence, "No, thanks. We don't want to buy a  
18 license to any of these patents," which was also part of  
19 the IP3 process, if that was -- if that was the ultimate  
20 decision.

21 Q. Okay. What about infringement? Did he make any  
22 determination whether Intel's products or proposed future  
23 products would use these inventions, practice these  
24 inventions?

25 A. I would expect that that would be part of his

1 analysis and he would be alert to provide advice to the  
2 company and -- about any likelihood of -- the likely  
3 consequence of patents being asserted against Intel. But  
4 I don't know for a fact because he -- the lawyer that did  
5 it just doesn't remember the substance of the analysis.

6 Q. So, he does not recall and Intel does not know  
7 what his conclusion was with respect to infringement?

8 A. Or that he formed one. I would expect he would  
9 have, but -- or risk of infringement, I should say. And  
10 no, there is -- he just doesn't remember; and there are  
11 no written records of the analysis.

12 Q. I'll hand you what we're going to mark as  
13 Number 23. This is a letter from Bradley Greenwald and  
14 Pamela Hays to Alex Laats, the president of BBN, dated  
15 November 27th, 2007; is that right?

16 A. Well, the title for Alex is "President, BBN  
17 Technologies, Delta Division." But otherwise, yeah, I  
18 think that's right.

19 Q. And that letter is dated November the 27th?

20 A. Yes.

21 Q. And that's the date after Bruce Sewell received  
22 the letter from BBN, correct?

23 A. It seems to be the indication of the stamp.

24 Q. How much time did -- and I've forgotten his name,  
25 and I apologize. What was the name of the fellow who did

1 the evaluation or the -- Larry Bennett.

2 A. Yeah.

3 Q. How many hours did Larry Bennett spend on this  
4 analysis?

5 A. You know, I didn't ask him specifically how many  
6 hours. We talked in terms of the, you know, turnaround  
7 over -- over, you know, less than two months. And he  
8 indicated there was, you know, a significant amount of  
9 work to get through that many patents in that period; but  
10 he didn't tell me, you know, how many hours.

11 Q. How many other similar projects was he working on  
12 at the same time?

13 A. I don't know.

14 Q. How many people did he speak to at Intel in doing  
15 this analysis?

16 A. I don't know.

17 Q. Do you know the names of anybody he spoke to?

18 A. No.

19 Q. Did you ask him that?

20 A. No.

21 Q. This wasn't the only thing he was working on at  
22 that time, though, correct?

23 A. I'm not sure. My expectation is it would have  
24 been a significant part of his assignments; but typically  
25 people have, you know, more than one thing going on.

1 Q. Did Intel hire any outside expert to assist in  
2 this analysis?

3 A. I don't think we hired any outside lawyers. I  
4 didn't specifically ask about Intel's outside experts  
5 that were non-lawyers.

6 Q. So, you don't know if they hired any sort of a  
7 technical expert to assist in this evaluation?

8 A. I don't know for sure. I would be surprised if  
9 they did, but I don't know for sure that they didn't.

10 Q. It's not typically the case that Intel does that?

11 A. In that time period it would be -- it would be  
12 unusual to hire an outside expert on something that  
13 resulted in a "no" answer and which I had never heard of.

14 Q. Intel did not enter into any sort of nondisclosure  
15 agreement with BBN or seek any additional information  
16 from BBN with respect to this matter?

17 A. I don't know.

18 Q. You don't have any reason to believe that they  
19 did?

20 A. No.

21 Q. I'll hand you what we're going to mark as  
22 Number 24. It's an e-mail from Brandon Antoni --

23 That's a gentleman you mentioned earlier?

24 A. Uh-huh.

25 Q. -- at Intel dated January 17th at 1:57 p.m. to a

1 fellow at BBN. Do you see that?

2 A. Yes.

3 Q. And the subject line is "BBN's portfolio sale  
4 offer to Intel." Do you see that?

5 A. Yes.

6 Q. And it's a letter from Brandon Antoni to Mr. Houh  
7 and it says, "Thank you for your company's letter to  
8 Bruce Sewell dated November the 19th, 2007, in which you  
9 offered Intel the opportunity to purchase a patent  
10 portfolio of over 200 patents." Do you see that?

11 A. I see that line, yes, in the e-mail.

12 Q. Okay. Back to our Exhibit Number 22, it says  
13 actually that BBN would consider offers to license or  
14 purchase for individual patents, one or more clusters of  
15 patents, or the entire portfolio. Do you see that?

16 A. Yeah, I saw that text.

17 Q. But the letter sent back -- or the e-mail sent  
18 back by Brandon Antoni only references an offer to  
19 purchase a whole portfolio of over 200 patents. Do you  
20 see that?

21 A. I see that line, yes.

22 Q. And it goes on to say, "We have reviewed these  
23 patents and are deciding to decline your offer." See  
24 that?

25 A. Uh-huh.

1 Q. And this was written by Brandon Antoni. It is not  
2 written by Mr. Bennett who actually did the purported  
3 analysis, correct?

4 A. I don't know what the adjective "purported" is  
5 supposed to mean in that context; but this e-mail is from  
6 Brandon, not Larry Bennett. That's true.

7 Q. And this e-mail doesn't say anything about Intel's  
8 reasons, correct?

9 A. It doesn't give a rationale for the decision.

10 Q. Well, it's got one sentence of substance -- "We  
11 have reviewed these patents and are deciding to decline  
12 your offer" -- correct?

13 A. I'm sorry. I don't know what "sentence of  
14 substance" means -- I mean -- means. The e-mail is here.  
15 We can read it. It's not inconsistent with other similar  
16 communications that Intel has issued.

17 I would note that BBN nowhere in the letter,  
18 at least the copy I have here, makes any allegation that  
19 any Intel products would require a license. I don't  
20 think there's anything remarkable about the e-mail.

21 Q. So, Intel did not believe that BBN was accusing it  
22 of infringing any or all of those patents?

23 A. I think that's correct, yes.

24 Q. It offers no explanation whatsoever about why  
25 Intel is declining the offer, correct?

1 A. It doesn't offer -- yeah. It doesn't give an  
2 explanation. This is not inconsistent with other e-mails  
3 declining to purchase patents.

4 Q. But we know that Mr. Antoni says that Intel has  
5 reviewed all of the patents that are the subject of the  
6 letter on November 19th, 2007, correct?

7 A. It says, "We have reviewed these patents."

8 Q. You read that to suggest that it's reviewed all of  
9 the patents?

10 A. I think that's a reasonable interpretation.

11 Q. And that would, of course, include the patents on  
12 page 1 of 4 which are the asserted patents in this case?

13 A. Yes.

14 Q. Did Mr. Antoni pick up the phone and call Henry  
15 Houh or Mr. Houh or anybody associated at BBN?

16 A. I don't know.

17 Q. Did anybody at Intel contact BBN for additional  
18 information about any of the patents in the table  
19 attached to the November 19th, 2007, letter which is  
20 Exhibit Number 22?

21 A. I don't know.

22 Q. Intel has got no knowledge of that?

23 A. I don't believe so.

24 This is one of tens of such things we get  
25 in -- we'd get in a month in that period.

1 MR. ALBRITTON: That concludes that offer,  
2 your Honor.

3 THE COURT: All right. Thank you.

4 How long is the direct examination for your  
5 next witness approximately?

6 MR. ALBRITTON: Probably 30 minutes, your  
7 Honor.

8 THE COURT: Well, why don't we try to conclude  
9 that and then adjourn for the day.

10 MR. ALBRITTON: Okay. May I have one moment,  
11 your Honor?

12 THE COURT: Yes.

13 MR. ALBRITTON: Your Honor, the plaintiff  
14 calls Kevin Zilka.

15 (The oath is administered.)

16 MS. OLIN: And, your Honor, I'm Jaime Olin,  
17 attorney for the plaintiff. May I approach the court and  
18 the witness with binders?

19 THE COURT: Yes.

20 MS. OLIN: May it please the court?

21 DIRECT EXAMINATION OF KEVIN ZILKA

22 CALLED ON BEHALF OF THE PLAINTIFF

23 BY MS. OLIN:

24 Q. Good afternoon, Mr. Zilka.

25 A. Good afternoon.

1 Q. Would you please introduce yourself to the jury?

2 THE COURT: Could you identify yourself,  
3 please?

4 MS. OLIN: Sure. Jaime Olin, attorney for the  
5 plaintiff.

6 THE COURT: Okay.

7 BY MS. OLIN:

8 Q. Mr. Zilka, would you please introduce yourself to  
9 the jury?

10 A. My name is Kevin Zilka.

11 Q. And please tell us a little bit about yourself.

12 A. I'm 39 years old. I'm happily married to my wife  
13 Stephanie. We're going on our 12-year anniversary coming  
14 up this May. I have four children, two twins, a  
15 5-year-old boy, a 3-year-old boy; and actually my wife is  
16 in the hospital right now and expecting our little girl  
17 any day.

18 Q. Well, congratulations and thank you very much for  
19 being with us this week.

20 Mr. Zilka, where did you grow up?

21 A. That's always been a hard question for me to  
22 answer. I grew up in a military family; so, we moved  
23 around from -- every other couple of years between state  
24 by state.

25 Q. And you mentioned you grew up in a military

1 family. Was it your father that was in the military?

2 A. Indeed. He was in Army Special Forces. He was a  
3 Green Beret.

4 Q. Tell us a little about your education. Where did  
5 you go to college?

6 A. I went to school at the University of South  
7 Florida. I received a bachelor's, a master's in  
8 electrical engineering. After that I received my law  
9 degree at Santa Clara University in California.

10 Q. What kind of law do you practice?

11 A. I exclusively practice patent law. Basically I  
12 help inventors get patents in the United States Patent  
13 Office.

14 Q. So, you work with inventors. Are you also an  
15 inventor yourself?

16 A. I am. I am a named inventor on 16-issued --  
17 granted patents and 12 pending applications.

18 Q. So, tell us a little of the subject matter of some  
19 of your patents.

20 A. Most of the inventions that I invent are based on  
21 technology that I use on a day-by-day basis, whether it  
22 be a cell phone or my vehicle, my car, or my computer,  
23 whether it be a network browser or another application.  
24 For example, one of my inventions is a -- it's a  
25 technology to allow you to access your apps in your phone

1 more seamlessly while you're in a car, with the whole  
2 idea being it would be more safe to drive and still be  
3 able to access, whether it be your *Facebook* on your  
4 online radio station.

5 Q. Now, you work with inventors; and you're an  
6 inventor yourself. Has that led to any additional  
7 interests for you?

8 A. It has. My law firm partner and I started our  
9 firm after I graduated from law school about a decade  
10 ago. Since founding that, we built our staff up to about  
11 a couple dozen employees.

12 But as we started, it was around the time of  
13 the technology crash, often coined as "the dot-com bubble  
14 burst," I guess. And while we did have a lot of large  
15 clients that were able to manage paying their bills okay,  
16 we also had some smaller inventors who were struggling to  
17 pay their bills. We saw that, and we had an idea for  
18 those particular small inventors who weren't able to  
19 afford getting through the Patent Office. We decided to  
20 stop paying our -- or start charging for our fees  
21 up-front, and instead we would partner with them. In  
22 other words, we would not charge our fees up-front. We  
23 would invest our own time, our own expertise, and help  
24 them get their patent, with the idea that in the end our  
25 interests would be aligned and that they would have their

1 patent and then we would share in any profits that they  
2 would get from their patent.

3 Q. Okay. And did you work on this through your law  
4 firm, or did you form a separate company to work on this?

5 A. The company -- yeah. The company I'm referring to  
6 was Stragent.

7 Q. When did you form Stragent?

8 A. I formed Stragent in 2007.

9 Q. And tell us where the name "Stragent" came from.

10 A. Stragent is something I came up with. It's a play  
11 on words or amalgamation or combination of two words --  
12 namely, "strategy" -- or "business strategy" and  
13 "patents." And the patent is that it reflects what  
14 Stragent does. It works with patents and it creates  
15 business value from patents and that was -- I guess that  
16 was how the idea came up.

17 Q. Now, Stragent partners with inventors. Does  
18 Stragent also buy patents?

19 A. We do.

20 Q. And about how many patents has Stragent bought and  
21 then licensed to other companies to use?

22 A. Over the years we've worked with dozens of  
23 different patent holders or independent inventors, and I  
24 would say the number is in the hundreds at this point.

25 Q. Are you the only owner of Stragent?

1 A. No. It's myself, a nice lady by the name of  
2 Leslie Novy, Alan Stuart, and Andrew Gordon, as well as  
3 Jason Player, who are with us here today, five of us.

4 Q. And all these other owners of Stragent live  
5 locally?

6 A. Yes, ma'am.

7 Q. Now, has Stragent ever done any other kinds of  
8 work that isn't related to patents?

9 A. Well, over the years we've done some IP  
10 consulting. At one point we had almost a hundred  
11 different clients in the local area. We were performing  
12 some IT services, meaning that we were building  
13 computers, purchasing computers, building networks,  
14 installing software.

15 In addition to that, we also did some internal  
16 research and development. At one point we had four  
17 engineers working on about half a dozen projects, meaning  
18 that they were inventing -- making inventions in-house  
19 and we were patenting them. I think today we have four  
20 pending applications that represent those efforts.

21 Q. Now going back to patents that Stragent has  
22 bought, has Stragent bought some patents from BBN?

23 A. Yes, ma'am.

24 Q. Tell me a little about that.

25 A. In the year 2008 we got together with BBN, and we

1 bought 11 patents from BBN. And after that -- there was  
2 a string of two or three additional purchases after that.

3 Q. How many patents total has Stragent bought from  
4 BBN?

5 A. Twenty.

6 Q. Now, going back to 2008, to that original purchase  
7 of BBN patents by Stragent, who at BBN were you primarily  
8 dealing with?

9 A. That would be Henry Houh, who we saw today, as  
10 well as Alex Laats.

11 Q. Now, Mr. Zilka, I've handed you a notebook. If  
12 you can turn in that notebook to the first three tabs,  
13 which are PTX 1, 2, and 3.

14 A. I see them here.

15 Q. Great. What are these?

16 A. PTX 1 is the '072 patent that we heard about  
17 today.

18 PTX 2 is the '244 patent that we again  
19 referenced today.

20 And then PTX 3 is the '102 patent.

21 Q. Thank you, Mr. Zilka.

22 And are these three patents related to each  
23 other?

24 A. They're what we would call a "patent family."  
25 They share the same pictures or diagrams. They also

1 share the same description of the invention and those  
2 diagrams. But they differ in the claims. The claims, of  
3 course, are the most important of every application.  
4 That's what defines the invention. The invention is  
5 defined by the words in the claim and not the  
6 specification or the other parts.

7 Q. Did Stragent buy these three patents from BBN?

8 A. Yes, ma'am.

9 Q. And are the '072 patent which was PTX 1 and the  
10 '244 patent, PTX 2 -- are those the two patents that are  
11 involved in this trial?

12 A. Yes, ma'am.

13 Q. So, now you see before you the next tab in this  
14 binder is PTX 149. Can you tell us what that is?

15 A. This is a Patent Sale Agreement between Stragent  
16 and BBN.

17 Q. And if you look at the page on the very bottom,  
18 there are some numbers; and the numbers are 13771. If  
19 you can turn to that page, please.

20 A. I'm there.

21 Q. And do you see on that page the '072, '244 and  
22 related '102 patents are covered by this agreement?

23 A. I do see that.

24 Q. So, did this agreement that we see in PTX 149 --  
25 did that actually give Stragent ownership of these

1 patents?

2 A. Yes, ma'am.

3 Q. Now going back to this 2008 time frame, were  
4 Stragent and BBN negotiating, going back and forth about  
5 payment terms for these patents?

6 A. There were a lot of back and forth about it. It  
7 started out on the phone and then as you heard today it  
8 escalated to the point where they came to visit me  
9 personally and then there were some additional phone  
10 calls and e-mails, et cetera.

11 Q. What did Stragent end up paying for the '072,  
12 '244, and '102 patents?

13 A. Stragent bought these patents in exchange for a  
14 promise to share 15 percent of gross proceeds of any  
15 profits with BBN.

16 Q. Were there any additional payment terms?

17 A. There were. There was a one-time good faith  
18 payment of \$100,000 as well as an annual minimum payment  
19 of \$10,000.

20 Q. Now, Mr. Zilka, at the time Stragent was  
21 negotiating with BBN, which of these components that  
22 you've mentioned -- the profit share, that one-time  
23 up-front payment, or that annual fee -- seemed most  
24 important to BBN?

25 A. Definitely the profit share. Absolutely.

1 Q. Okay. And did BBN show any interest in that time  
2 in just getting a one-time up-front payment for these  
3 patents?

4 A. Absolutely not.

5 Q. Did Stragent's purchase of the '072, '244, and  
6 '102 patents that we've been talking about -- did that  
7 purchase include any foreign patents that are related to  
8 those?

9 A. No, ma'am.

10 Q. And do you know whether there are any foreign  
11 patents that are related to the '072, '244, and  
12 '102 patents?

13 A. There are no foreign patents.

14 Q. Now, when Stragent, back in 2008, bought the '072  
15 and '244 patents, did Stragent know that Intel was using  
16 them in the Intel server processors that are the subject  
17 of this trial?

18 A. Absolutely not.

19 Q. And, in fact, do you know whether those server  
20 processors were even being sold by Intel at the time  
21 Stragent bought the '072 patent and '244 patent?

22 A. They were not.

23 Q. Now, we've talked a little bit throughout the day  
24 about this '102 patent that's related to the two patents  
25 involved in this trial. Why isn't Stragent accusing

1 Intel of infringing the '102 patent?

2 A. So, basically the '102 patent was part of this  
3 case originally. After the case began, we were allowed  
4 access -- I should not say "we." Dr. Stone, our expert,  
5 was allowed access to secret code that one could tell  
6 what the Intel processors were doing. And after looking  
7 at that code, it was determined that a particular element  
8 of the claim -- which by the way is not in these other  
9 claims that we've talked about today -- there was a  
10 switch limitation in these claims that Dr. Stone said  
11 Intel did not have in their product. So, as soon as we  
12 found out about that, we immediately dropped this  
13 particular '102 patent from the case.

14 Q. Did Stragent do anything else with respect to  
15 Intel and the '102 patent?

16 A. We very promptly went to the court and made --  
17 basically told the court exactly what we found, and that  
18 is that Intel did not use the technology.

19 Q. Now going back to the 2008 time frame again when  
20 Stragent purchased the '072, '244, and '102 patents.  
21 What did Stragent do next?

22 A. So, the first thing we did, we rolled up our  
23 sleeves; and we tried to find out, okay, who is utilizing  
24 this technology, who is using it without permission. So,  
25 it took a couple of years; but we finally found two

1 companies that did use the technology.

2 Q. Who were those companies?

3 A. The first company was a company by the name of  
4 Freescale Semiconductor, and the second company was a  
5 company by the name of Lattice Semiconductor.

6 Q. And what kinds of companies are Lattice and  
7 Freescale?

8 A. These are chip manufacturers.

9 Q. What did Stragent do when it figured out that  
10 Lattice and Freescale were using the '072, '244, and  
11 '102 patents without permission?

12 A. We filed a case against those companies explaining  
13 to the court that they were indeed using -- excuse me --  
14 making products and selling products that utilized the  
15 technology.

16 Q. And did Stragent eventually reach agreements with  
17 Freescale and Lattice?

18 A. Yes, ma'am.

19 Q. Did those agreements include licenses for Lattice  
20 and Freescale to use the patents?

21 A. Yes, ma'am.

22 Q. Now, you see in your binder you have PTX 50 and  
23 51. They should be the next two exhibits.

24 A. I see those here.

25 Q. Okay. What is PTX 50?

1 A. PTX 50 is an agreement between Stragent and  
2 Lattice Semiconductor.

3 Q. And what is PTX 51?

4 A. PTX 51 is an agreement between Stragent and  
5 Freescale Semiconductor.

6 Q. Okay. So, let's start with PTX 51. Tell us a  
7 little about this agreement that Stragent reached with  
8 Freescale.

9 A. Well, the first thing we did was we reached out to  
10 Freescale and requested some information. In particular  
11 we wanted to know how much money they made and how much  
12 money they expected to make by selling products using the  
13 BBN patents.

14 MR. JONES: Your Honor, we would object to  
15 this testimony for the reason that it is a fact that is  
16 being added to this agreement. It constitutes  
17 inadmissible parol evidence.

18 This agreement, the Freescale agreement,  
19 contains a merger provision that says all negotiations  
20 are merged into the agreement. Because of that, it's  
21 inadmissible parol evidence for them to try to put in  
22 additional information about the terms of the agreement  
23 from which they'll try to include other information. We  
24 object on that basis, your Honor.

25 THE COURT: What was the question again?

1 Could it be read back, please?

2 MS. OLIN: It was just generally asking about  
3 the agreement and his recollection of the terms of the  
4 agreement.

5 THE COURT: Well, for the moment, he's only  
6 testified about what's actually in the agreement. So,  
7 I --

8 MR. JONES: I think he started testifying  
9 about the negotiations and what he understood from what  
10 they were interested in.

11 THE COURT: Well, let's confine it for the  
12 moment to what's actually in the agreement; and if there  
13 is an attempt to go beyond that, we'll consider whether  
14 these are permissible.

15 MS. OLIN: Okay.

16 MR. JONES: Thank you, your Honor.

17 BY MS. OLIN:

18 Q. Mr. Zilka, let's take a look at page 4 of  
19 Exhibit 51, Section 3.1 specifically.

20 A. I see it there.

21 Q. Okay. How much did Freescale pay Stragent based  
22 on their past and then future use of --

23 THE COURT: What do the blacking out represent  
24 here?

25 MR. ALBRITTON: Your Honor, there were some

1 agreements among the parties about some necessary  
2 redactions; and those are the redactions that were agreed  
3 to by the parties and are subject to prior motions and  
4 orders before the court.

5 MR. JONES: That's correct, your Honor.

6 THE COURT: Okay.

7 BY MS. OLIN:

8 Q. Okay. So, Mr. Zilka, we're looking at Section 3.1  
9 of the Freescale agreement. Can you tell us how much  
10 Freescale paid for their past and future use of the  
11 patents?

12 A. \$350,000.

13 Q. And was that a license for Freescale to use the  
14 BBN patents forever?

15 A. Yes, ma'am.

16 Q. And generally how did Stragent -- how was that  
17 350,000-dollar number -- who came up with that, and how  
18 was that reached?

19 MR. JONES: Your Honor, that's the information  
20 that we would object to. Again, the negotiations of this  
21 agreement by the merger clause are all merged into the  
22 agreement. That's what the agreement says. Any  
23 testimony about how these figures were derived outside of  
24 that agreement is inadmissible parol evidence, and I  
25 object on that basis.

1 THE COURT: Okay. I'm going to sustain that.

2 MR. JONES: Thank you, your Honor.

3 BY MS. OLIN:

4 Q. Mr. Zilka, let's move on to Exhibit 50; so, go  
5 back one tab. And you see that this is the agreement  
6 between Lattice and Stragent?

7 A. Yes, ma'am.

8 Q. So, did Lattice also agree to pay Stragent for  
9 using Stragent's patents?

10 A. They did.

11 Q. And if you turn again to page 4 of PTX 50, how  
12 much did Lattice pay Stragent for using the BBN patents?

13 A. \$100,000.

14 Q. And was that a license for Stragent to use the BBN  
15 patents forever?

16 A. Yes, ma'am.

17 Q. Okay. Why, then, was the Freescale license  
18 \$350,000 while the Lattice license was \$100,000?

19 MR. JONES: Again, your Honor, we would have  
20 the same objection.

21 THE COURT: Sustained.

22 BY MS. OLIN:

23 Q. Okay. Other than the '072 patent, '244 patent,  
24 and '102 patent that we've been talking about, were any  
25 other patents discovered by Stragent's agreements with

1 Lattice and Freescale?

2 A. No, ma'am.

3 Q. And what about any foreign patents related to the  
4 '072, '244, and '102 patents? Were any of those covered  
5 by the Stragent agreements with Lattice and Freescale?

6 A. No, ma'am.

7 Q. Why not?

8 A. There weren't any.

9 Q. Okay. Now, Mr. Zilka, I want to move back to the  
10 '102 patent for just a moment. And you mentioned that  
11 after Stragent found out that Intel was not using the  
12 '102 patent in the server processors that we've been  
13 talking about, that Stragent dropped the '102 patent from  
14 this lawsuit; and you also mentioned that Stragent made a  
15 filing with the court regarding that. Do you recall what  
16 that filing was?

17 A. In essence, it was basically a promise that the  
18 issue was put to rest.

19 Q. And is that known as a "covenant not to sue"?

20 A. I believe so.

21 Q. Now, Mr. Zilka, how would you describe Stragent's  
22 relationship with BBN?

23 A. I would consider it as a business partnership.  
24 BBN has great technology, great patents; but what they  
25 lack is the expertise, the experience, and sometimes the

1 resources to profit from those patents that represent  
2 that technology. By joining with Stragent, BBN basically  
3 benefits from Stragent's expertise and experience so that  
4 if there is profit from the patents, it is shared amongst  
5 both companies, BBN and Stragent.

6 Q. And if this jury awards Stragent money in this  
7 case, will that money be shared with BBN?

8 A. Absolutely.

9 Q. Now, earlier today did you hear Dr. Milligan  
10 talking about some other unrelated patents, patents that  
11 are in different families from the '072, '244, and  
12 '102 patents, but patents that also came from the iRouter  
13 project?

14 A. I do recall.

15 Q. Did Stragent buy those other iRouter patents, too?

16 A. Yes, ma'am.

17 Q. And has Stragent granted any licenses to other  
18 companies to use those iRouter patents?

19 A. We have. We've granted licenses to two companies,  
20 one company by the name of Huawei and the second company  
21 is another company called "Accelerated."

22 Q. Okay. So, other than the '072, '244, and  
23 '102 patents and these other iRouter patents, does  
24 Stragent currently own any other BBN patents?

25 A. Yes. There were multiple other patent families

1 that I referenced earlier that we did purchase and we do  
2 own.

3 Q. Now, does Stragent add value to these patents that  
4 it owns?

5 A. Yes, I believe so. For example, in the case of  
6 the patents we're talking about here, the '102 and the --  
7 excuse me, not the '102, the '244 and the '072, our big  
8 aha moment in this particular matter was unsurfacing,  
9 after years of trying to find evidence, a patent  
10 application, a patent application by the inventor  
11 das Sharma. I believe it's the same inventor that's  
12 going to speak in this trial.

13 This particular patent application -- there's  
14 two things important about it. Number 1, it came after  
15 the BBN patents, the '072 and the '244. And, Number 2,  
16 as an aside, it was continuously rejected in the Patent  
17 Office; and eventually the owner gave up on the  
18 particular application.

19 So, the point here is that by finding this  
20 evidence, this evidence, this rejected -- serially  
21 rejected application that came after BBN and our ability  
22 to connect the dots between this application and the  
23 Intel's server processors, we were able to find enough --  
24 gather enough information to come together with our team  
25 and basically get in the door so that our experts

1 could -- such as Dr. Stone could actually see the code  
2 and verify infringement.

3 Q. And if you'll turn back to your binder. Take a  
4 look at the next several exhibits which are DTX 130,  
5 PTX 105, PTX 106 and PTX 107. And these are 20 or 30  
6 licenses between Stragent and other companies. If you'll  
7 flip through those and tell us who some of the other  
8 companies on these licenses are. To name a few, there's  
9 Microsoft, AOL, Yahoo!, Google, Nokia; and I'm sure  
10 there's a few others here as well.

11 And what do these licenses at DTX 130 and PTX  
12 105 through 107 have in common with each other?

13 A. They give these particular companies the  
14 permission to use the BBN patents.

15 Q. And do these licenses all include the '072, '244  
16 and '102 patents?

17 A. Yes.

18 Q. Do they also include the other BBN patents aside  
19 from the '072, '244 and '102 patents?

20 A. Yes, ma'am.

21 Q. And have these companies that are parties to these  
22 licenses paid Stragent to use patents that Stragent  
23 acquired from companies other than BBN?

24 A. These companies did pay for those licenses.

25 Q. And what about patents on which you're listed as

1 an inventor? Do those licenses include rights to those  
2 companies to use those patents?

3 A. These same companies also compensated me for my  
4 personal inventions as well.

5 Q. Thank you, Mr. Zilka.

6 MS. BOSTWICK: Pass the witness.

7 THE COURT: All right. I think we'll adjourn  
8 for the day at this point unless there is an objection to  
9 that.

10 MR. ALBRITTON: No objection, your Honor.

11 MR. JONES: No objection, your Honor.

12 THE COURT: All right. So, Mr. Zilka, you  
13 have to return tomorrow for your cross-examination.

14 THE WITNESS: Yes, your Honor.

15 THE COURT: Thank you. So, for the moment  
16 you're excused.

17 And I thank the jury for your attention.  
18 We've gone a little past where we usually break, but  
19 we'll break for today. And again I remind you not to  
20 discuss your testimony -- not your testimony -- the court  
21 proceedings with anyone outside of this room or even  
22 among yourselves. You'll save that discussion for  
23 deliberations later on.

24 So, the court is adjourned for the moment.

25 But we, as far as the lawyers are concerned, need to

1 return in ten minutes because there are a few items that  
2 we have to address; and the jury need not be here for  
3 that. So, thank you for your attention. I thought the  
4 jury was very attentive today and I really appreciate  
5 that and we'll see you tomorrow morning at 9:00.

6 (Recess, 5:41 p.m. to 5:51 p.m.)

7 (Open court, all parties present, jury not  
8 present.)

9 THE COURT: There are a few items that I want  
10 to bring up, and then I'll entertain anything that  
11 counsel wants to raise.

12 First of all, how are you planning to deal  
13 with the admission of these exhibits?

14 MR. ALBRITTON: Your Honor, we were just about  
15 to offer those. We're going to offer all of the exhibits  
16 on our First Amended Final Exhibit List, which was  
17 attached to the First Amended Pretrial Order filed on the  
18 9th, except for certain numbers. And what I would  
19 propose is we would provide Ms. Ferguson in the morning  
20 an updated list that has them physically marked as  
21 "offered and admitted" to make --

22 THE COURT: Okay. Are any of the ones that  
23 you're taking off the list those that have been  
24 distributed so far?

25 MR. ALBRITTON: No, sir.

1 THE COURT: Okay. All right. We'll handle  
2 that in the morning, then.

3 Does Intel have any comment on that?

4 MR. CAMPBELL: That's an acceptable procedure  
5 to us.

6 THE COURT: Okay. All right. Then we have  
7 this motion to clarify. And, Mr. Albritton, tell me what  
8 it is that Dr. Vellturo would plan to testify to if I  
9 were to allow him to testify about the 42 percent. Where  
10 does that get you, in other words?

11 MR. ALBRITTON: Yes, sir. Ms. Bostwick is  
12 going to address that, if that pleases the court.

13 THE COURT: Sure.

14 MS. BOSTWICK: Thank you, your Honor. Melanie  
15 Bostwick on behalf of Stragent.

16 And I'm sorry. I'll use the podium for the  
17 court reporters.

18 So, as our motion explained, the two elements  
19 to Dr. Vellturo's analysis in this part of his opinion  
20 goes to Factor 11 of the *Georgia-Pacific* factors. The  
21 second part, which we understand the court has clearly  
22 excluded, is about the apportionment of value between the  
23 19 different RAS features in the bundle. And we  
24 understand that's excluded and will not offer that before  
25 the jury.

1           The first element of his analysis is just  
2 taking the value of those 19 RAS features as a whole, the  
3 set of features that are colinear. They appear together  
4 in the accused Intel products. And that is his hedonic  
5 regression where he calculated, as explained in his  
6 report and the exhibits to that report, that those 19  
7 features together account for I believe it is 42 percent  
8 of the value of the accused products; and that's --

9           THE COURT: But where does that -- my question  
10 is where does that go? I mean, what does that prove?  
11 What's the relevance of the fact that 19 features,  
12 including one bundle that includes this, represent  
13 52 percent of the value? Where does that testimony lead?

14           MR. JONES: Well, I think it speaks to the  
15 value of, you know, the set of features that the accused  
16 feature is a part of; and then that would be relevant to  
17 the *Georgia-Pacific* analysis.

18           THE COURT: Okay. Well, Mr. Campbell -- or  
19 does anybody want to --

20           MR. JONES: Could I respond, your Honor?

21           THE COURT: Sure.

22           MR. JONES: For the record, it's Mike Jones.

23           You know, your Honor, I think it only  
24 compounds the error. What we have here is an attempt at  
25 apportionment. And what they have done is they've taken

1 the RAS standard bundle of features which includes,  
2 according to his calculations, 19 features -- I think it  
3 really includes more -- and he's then done an hedonic  
4 analysis on that and came up with an opinion on what  
5 portion of the price should be attributable to that.

6 THE COURT: I know what he's done.

7 MR. JONES: Okay. Excuse me. Well, then to  
8 the question of where do we go from here, Number 1, we're  
9 attempting to apportion but we've apportioned the wrong  
10 thing and I think that's ripe for jury confusion.

11 Number 2, once we've apportioned it, what does  
12 the jury do with it? They know that the RAS bundle is  
13 worth that, but there is no attempt whatsoever to narrow  
14 it in on the patented feature which should be our  
15 analysis. And this does not do that.

16 THE COURT: Okay. Any response to that?

17 MS. BOSTWICK: Yes, your Honor. I would just  
18 point out that Intel's expert Ms. Woodford has opined  
19 that the bundle as a whole, bundle of RAS features, has  
20 no value and that that is relevant to the calculation of  
21 the value of the patented feature; and, so, we would like  
22 Dr. Vellturo to be able to rely on his rebuttal to that.

23 THE COURT: Okay. Go ahead.

24 MR. JONES: Excuse me, your Honor. I  
25 apologize.

1 THE COURT: Yes. Go ahead.

2 MR. JONES: The only thing I was going to say  
3 is as we offered in our reply, we are not presenting that  
4 evidence if his evidence doesn't come in. That was a  
5 rebuttal.

6 THE COURT: Okay. On that basis I'm going to  
7 deny the motion to clarify, which means that Dr. Vellturo  
8 cannot testify about the methodology by which he got the  
9 42 percent figure. Okay?

10 MS. BOSTWICK: Thank you.

11 THE COURT: And I'll issue an order about that  
12 at a later time.

13 Then we have the motion *in limine* concerning  
14 new expert opinions by Stragent. Who is going to address  
15 that one?

16 MS. BOSTWICK: That would be me, your Honor.

17 THE COURT: Okay.

18 MS. BOSTWICK: So, I hope your Honor has had  
19 time to review the motion papers.

20 THE COURT: I have.

21 MS. BOSTWICK: I apologize for filing it last  
22 night. But as your Honor is aware, this issue came up  
23 because in the new proposed jury instructions that Intel  
24 submitted last Friday, in the section on obviousness --  
25 and you can actually see this because it's in the draft

1 final jury instructions that you issued earlier today --  
2 Intel is contending that certain prior art references  
3 render claims 12 and 16 of the '072 patent obvious; and  
4 these are opinions that are not disclosed in its expert  
5 reports.

6 THE COURT: Were they covered by the  
7 invalidity contentions that were filed earlier?

8 MS. BOSTWICK: I believe there were general  
9 statements in the invalidity contentions; but as the  
10 cases cited in our motion make clear, the rule in this  
11 court -- I believe it's -- this court has held for the  
12 last 12 years that if it is not in the expert's report,  
13 that the expert is not allowed to offer that opinion at  
14 trial.

15 THE COURT: Okay. But the contention is it  
16 should be excluded because it's not in the expert report,  
17 not that it should be excluded because it wasn't in the  
18 invalidity contentions.

19 MS. BOSTWICK: That's correct, your Honor.

20 THE COURT: Okay.

21 MR. CAMPBELL: Your Honor, I actually think  
22 that this is an issue for the charge conference and not a  
23 motion *in limine*. We don't plan to have the experts  
24 present analysis that their expert reports didn't provide  
25 notice about. It really is a question of what should the

1 jury be told about what our contentions are, and we think  
2 that that is more appropriately brought up in the context  
3 of the charge conference.

4 THE COURT: But I assume that you are planning  
5 to have expert testimony about claim 12 being obvious,  
6 right?

7 MR. CAMPBELL: Well, only in the sense that if  
8 the claim is anticipated, it also is obvious. We don't  
9 plan to -- for example -- let me be very specific and  
10 clear about this. We don't plan to have a new  
11 combination of references that isn't disclosed in the  
12 expert reports --

13 THE COURT: Well, you're saying it's obvious  
14 over the same reference that you say anticipates, right?

15 MR. CAMPBELL: That is correct, your Honor.

16 THE COURT: And that for the moment at least  
17 with respect to claim 12, is not in the expert report,  
18 right?

19 MR. CAMPBELL: There is a passage in the  
20 supplemental expert report that talks generally about  
21 Dr. Stark's view that the claims are obvious in view of  
22 his work. There is also, with respect to claim 16, a  
23 more detailed analysis about how that claim is rendered  
24 obvious in view of some additional material that's again  
25 in part of his chips. He's not going to be doing

1 combinations of other references.

2 THE COURT: He's not bringing in any new  
3 references.

4 MR. CAMPBELL: That is correct.

5 THE COURT: But he is extending his discussion  
6 of the reference on which he relies to include  
7 obviousness as well as anticipation.

8 MR. CAMPBELL: Actually, I believe the answer  
9 to that question is "no" for the following reason.  
10 Dr. Stark is also a fact witness that we disclosed long  
11 ago. He does plan to talk about how the chips that he  
12 built and designed are put together, and then there will  
13 be a portion of his testimony where we present expert  
14 analysis consistent with what's in his expert report.  
15 So, we don't plan to go beyond, in the expert portion of  
16 his testimony, what's in his reports; but we do want to  
17 preserve the option of having the jury instructed with  
18 respect to claim 12 that Dr. Stark's work would either  
19 anticipate or render it obvious.

20 THE COURT: Well, I don't see that this is  
21 just a charge issue. It seems to me that your opposition  
22 to this motion said, well, it's true he didn't raise  
23 obviousness over this reference with respect to claim 12  
24 but he raised it with respect to claim 16 so there is no  
25 prejudice, is what I had understood you to be arguing.

1 Fair enough?

2 MR. CAMPBELL: That is what we are arguing  
3 with respect to the charge that goes to the jury. We do  
4 not plan to have Dr. Stark get up and do an  
5 independent -- different analysis for claim 12 than the  
6 one that's in his report.

7 THE COURT: Well, isn't the analysis that he  
8 does in the report now directed to anticipation?

9 MR. CAMPBELL: It is, your Honor, yes.

10 THE COURT: And what you plan to argue is that  
11 that same analysis would support a finding of  
12 obviousness, right?

13 MR. CAMPBELL: Yes, your Honor. That is  
14 correct.

15 THE COURT: Okay. So, if he did this with  
16 respect to claim 16, what's the prejudice?

17 MS. BOSTWICK: Yes, your Honor. The prejudice  
18 is that we have no notice or disclosure of what his  
19 opinion would be as to the obviousness of one or more --  
20 frankly, we don't know -- elements of claim 12.

21 Dr. Stark offered an opinion that claim 16 is obvious in  
22 light of either the Hydrogen Atom processor alone or the  
23 Monsoon processor alone; but what he did was he said,  
24 okay, all the elements of claim 16 that are part of  
25 claim 12, those are anticipated. And then the additional

1 element of claim 16, the parallel decomposition, he said  
2 that's anticipated also. But if that one element is not  
3 anticipated, then it would have been obvious. And he  
4 provided, in paragraphs 51 and 62 of his supplemental  
5 expert report, an explanation that would support -- or  
6 that, you know, is offered to support an opinion of  
7 obviousness. He did not identify any part of claim 12  
8 where he would say, you know, if this isn't actually  
9 present in the prior art, then it would have been obvious  
10 to a person of ordinary skill and here is why I think  
11 that.

12 So, we have no disclosure of the actual  
13 obviousness opinion; and this is exactly what this court  
14 rejected in the *SynQor* case that is cited at page 6 of  
15 our brief. You said you can't just as an expert say, you  
16 know, "This claim is anticipated by the prior art  
17 reference; but if it's not anticipated, it's obvious" and  
18 not provide any further analysis. That kind of opinion  
19 is excluded.

20 THE COURT: Well, let me tell you what my  
21 concern is, that we had this very late claim construction  
22 here which it seems to me to some extent changed the  
23 playing field here. The other claim constructions came  
24 before the expert reports. The experts didn't have the  
25 benefit of the claim constructions that I issued the

1 other day, and I'm not inclined to be too restrictive to  
2 the extent that they are addressing issues that are  
3 brought into play as a result of those new claim  
4 constructions.

5 Do you want to address that? Go ahead.

6 MS. BOSTWICK: I would like to address that if  
7 I may, your Honor. I have a few points.

8 The first is that when we went through this  
9 with them yesterday in the e-mail exchange that was  
10 attached as Exhibit A to our motion, they never argued  
11 that the reason that they were offering this new --  
12 trying to offer this new opinion on obviousness was as a  
13 result of your Honor's recent claim constructions. They  
14 said, "No, no. Look. It's in the report that he's  
15 already filed"; and they pointed to paragraphs 11 and 47  
16 which we don't believe suffice as an opinion of  
17 obviousness.

18 The other point I would make is that while it  
19 is true that the court only recently adopted those claim  
20 constructions, the very supplemental report that they are  
21 pointing to that Dr. Stark submitted was submitted as  
22 part of this whole dispute over the courses of briefing  
23 where they said that Stragent's experts were applying  
24 these new claim constructions; and they submitted this  
25 supplemental expert report specifically to address those

1 alleged new constructions. So, they've already had an  
2 opportunity to submit his supplemental expert report in  
3 which they offer their opinions under this supposedly new  
4 understanding of the claims which in relevant part the  
5 court has now adopted.

6 And the other point I would just make, that,  
7 you know, Intel is not asking and has not asked for an  
8 opportunity to submit, you know, a supplemental expert  
9 report in light of the new claim constructions; and, so,  
10 we don't think that that is the -- a proper basis for  
11 allowing them to introduce these new opinions.

12 THE COURT: Mr. Campbell?

13 MR. CAMPBELL: Your Honor, it's true we had a  
14 claim construction hearing last week and there were some  
15 constructions that the court adopted that neither party  
16 had ever proposed in the case. We understand that  
17 because the court has ordered that those constructions  
18 must be applied, that the experts need to apply them.  
19 So, the way in which the chip works and the way in which  
20 Dr. Stark has applied the analysis, we believe to be  
21 disclosed in the existing reports. We plan to present  
22 the evidence consistent with those disclosures. It is  
23 clear to me that Stragent and Intel have a disagreement  
24 about how those chips work and how they line up with the  
25 court's claim construction, but we do not plan to depart

1 from what we have described as the operation of those  
2 circuits. We believe that notwithstanding the court's  
3 claim construction, it still anticipates.

4 To the extent that we end up with a charge to  
5 the jury that includes obviousness, we think that that's  
6 appropriate. All of the evidence and analysis in terms  
7 of how the chip works has been disclosed. They've had an  
8 opportunity to depose Dr. Stark twice. We just don't  
9 think that there is really any prejudice here, and we  
10 think it fundamentally is a question of simply going with  
11 the positions that we've disclosed from the outset of the  
12 case that we do maintain that the Hydrogen chip and the  
13 Monsoon chip and the other prior art chips that we  
14 pointed to either anticipate or alone render these claims  
15 obvious.

16 THE COURT: Okay. Well, Mr. Campbell, it  
17 sounds to me as though you've got a decision to make; and  
18 that is whether you're going to ask Dr. Stark to testify  
19 to obviousness of claim 12 based on the Hydrogen and the  
20 other reference. And until we know what your decision is  
21 about that, I'm not going to rule on it because I don't  
22 need to. So, I think I'm going to postpone my ruling on  
23 this question until we see exactly what you're going to  
24 do.

25 I'm not sure it's just a charge conference

1 issue but why don't we postpone it and if there is going  
2 to be a dispute about what Dr. Stark testifies to, let's  
3 bring it up before he testifies so that I can rule on it  
4 in the context of something concrete. This is for the  
5 moment a bit amorphous, it seems to me.

6 MR. CAMPBELL: Understood, your Honor.

7 THE COURT: Okay?

8 MS. BOSTWICK: Yes, your Honor. If I may  
9 raise one further point on this topic.

10 THE COURT: Sure.

11 MS. BOSTWICK: As your Honor has discovered,  
12 the principal debate between the parties on this issue  
13 relates to the new opinion on claim 12's obviousness in  
14 light of Hydrogen and Monsoon. But there is also in the  
15 proposed jury instruction an opinion -- or a request for  
16 a jury charge that both claims 12 and 16 are obvious in  
17 light of the Hyannis processor alone and the Castine  
18 processor alone. And as we pointed out in our motion,  
19 these are also new opinions.

20 Dr. Bims, who is the expert who addressed  
21 those prior art references, did not opine that these  
22 claims 12 and 16 were obvious in light of those  
23 references alone. We put that in our motion. Intel  
24 didn't say anything in response to that part of our  
25 motion; and, so, we would ask that Intel not be allowed

1 to offer those opinions.

2 THE COURT: And, Mr. Campbell, what's your  
3 response to that?

4 MR. CAMPBELL: Your Honor, we do not plan to  
5 offer an obviousness opinion with respect to anything  
6 that's not in Dr. Bims' report. Dr. Stark won't be  
7 testifying about the Hyannis. Dr. Bims did include  
8 information about obviousness. We don't plan to go  
9 beyond that. So, to the extent that they are concerned  
10 that there is something in the proposed jury instructions  
11 that strays beyond what the expert reports show, we don't  
12 plan to present that kind of evidence about Hyannis.

13 THE COURT: Okay. Well, again, I think this  
14 is in the amorphous category. We're going to be sitting  
15 down -- you have these draft instructions. We're going  
16 to be sitting down after court tomorrow to talk about  
17 them, and you can raise some issues about this. But  
18 you've got to decide what testimony you're going to  
19 present and tell the other side about it so that if there  
20 is a dispute about this I can resolve it.

21 MR. CAMPBELL: Understood, your Honor.

22 THE COURT: Now, one other thing that I want  
23 to raise is about claim 1 of the '244 patent. I had  
24 understood that there wasn't any claim for damages; and  
25 then when I saw the proposed final instructions, the

1 supplemental proposed final instructions, it does seem to  
2 me there is an issue about this. Is there an issue about  
3 whether there are damages sought with respect to claim 1  
4 of the '244?

5 MR. ALBRITTON: Thank you, your Honor. Eric  
6 Albritton. Dr. Vellturo does not opine about specific  
7 damages with respect to '244; however, Ms. Woodford does.  
8 Ms. Woodford says that there is a single lump-sum payment  
9 of somewhere in the neighborhood of \$350,000 that would  
10 be the hypothetical license payment for both patents in  
11 the case which would necessarily include claim 1 of the  
12 '244 patent. So, Ms. Woodford herself opines that there  
13 are damages associated with a reasonable royalty properly  
14 associated with claim 1 of the '244.

15 THE COURT: So, that's all you're worried  
16 about is why is Ms. Woodford testifying about this if  
17 it's not an issue?

18 MR. CAMPBELL: She won't be offering that  
19 opinion, your Honor.

20 THE COURT: All right. So --

21 MR. ALBRITTON: Well, that -- your Honor, then  
22 we've got a real problem because in her report she does  
23 not segregate. She has one single damages opinion that  
24 relates to both patents; and, so, now all of a sudden,  
25 your Honor, I don't know how they can start changing her

1 opinions. Those were her opinions. She obviously issued  
2 her report after Dr. Vellturo. She chose and Intel chose  
3 to issue those opinions in that way, and therefore that's  
4 sort of their problem. They've made their bed, your  
5 Honor. They need to lie in it. And it would be horribly  
6 prejudicial to us, having relied on what she did, to now  
7 be in a position where they can change their opinions.

8 THE COURT: Okay. Mr. Campbell -- or  
9 Mr. Jones?

10 MR. CAMPBELL: I'm going to pass to Mr. Jones  
11 who will be handling that examination.

12 MR. JONES: Your Honor, she had to assume in  
13 order to do an opinion that the patents were valid and  
14 infringed that were being asserted at that time and she  
15 did assume that they were both valid and infringed and  
16 they both have asserted it.

17 Now that there is just one patent in the case,  
18 she's not going to change her number. It obviously is  
19 too high because of that.

20 THE COURT: She's going to say it shouldn't be  
21 more than X or --

22 MR. JONES: Yes. She says it should not be  
23 more than \$350,000.

24 THE COURT: Mr. Albritton, how is that  
25 prejudicial?

1 MR. ALBRITTON: Well, I guess I'm a little  
2 confused because there are two patents in the case.  
3 There were two patents in the case at the time she issued  
4 her report; and whether she had to assume or not, which  
5 certainly she did, she opined that the reasonable royalty  
6 was \$350,000 lump sum for both of them.

7 THE COURT: Well, how are you prejudiced if  
8 she takes out one of them and talks only about the '072  
9 and says "I think the maximum royalty ought to be X for  
10 that" and she doesn't say anything about the '244? How  
11 is that prejudicial to you?

12 MR. ALBRITTON: It's prejudicial, your Honor,  
13 because I've relied on that fact and I can argue that  
14 Intel agrees that there are, in fact, damages associated  
15 with both patents. That's precisely what she opined.  
16 She was not required to opine to that. So, that is the  
17 prejudice to us, your Honor.

18 THE COURT: But you tell me that Dr. Vellturo  
19 isn't going to address the '244 patent.

20 MR. ALBRITTON: He's not assigning specific  
21 damages to it.

22 Your Honor, there is an undercurrent of an  
23 argument here that maybe is not -- the court doesn't  
24 fully appreciate, having gotten in sort of late; and that  
25 is one of the things that Ms. Woodford says, is that

1 there are only two patents here in this hypothetical  
2 negotiation as opposed to three patents that were at  
3 issue in the Freescale and Lattice case. If the court  
4 determines as a matter of law that there are no damages  
5 as to the '244, she very well may try to make some hay  
6 with this with respect to her damages opinions otherwise;  
7 and we were relying on her opinions that those were the  
8 appropriate damages as it related to both patents.

9 MR. JONES: Your Honor, we're not going to try  
10 to make any hay of anything. I mean, this is strictly a  
11 situation where -- you know, it's kind of to me the  
12 ultimate gotcha. You have an expert that has to assume  
13 the patents are valid and infringed. She's done that.  
14 She's come up with a lump-sum figure of not more than  
15 \$350,000; and she'll say that applies to the '072 patent.

16 THE COURT: Okay. I think there is nothing  
17 that I want to rule on right now. If Dr. Vellturo is not  
18 going to address the '244 patent, that's fine. That's  
19 not a problem. Nobody's objecting to that. And we'll  
20 see what happens when Ms. Woodford gets to her testimony  
21 about these license agreements and things like that, as  
22 to whether there is an objection to that.

23 MR. ALBRITTON: Yes, sir.

24 THE COURT: So, again, we'll postpone.

25 Let me see. I must say there is all this

1 testimony about monetization of these patents,  
2 Mr. Albritton. It seems to me to be coming a bit close  
3 to having people who aren't experts testify that there  
4 was infringement with respect to these patents. I'm sure  
5 you don't intend that, right?

6 MR. ALBRITTON: No, sir. I think I can maybe  
7 address the court's concern a little bit more as it  
8 relates to Mr. Zilka.

9 So, as the court knows, the defendants filed a  
10 motion -- a *Daubert* motion twice with respect to the  
11 license agreements. What the -- of course Judge Love  
12 overruled that portion, as well did this court. We've  
13 got exhibits that are not objected to that are the  
14 licensing revenue provided by Freescale and -- I'm  
15 sorry -- the accused revenue provided by Freescale as  
16 well as the accused revenue provided by Lattice in those  
17 prior matters. That information was specifically relied  
18 upon by Dr. Vellturo to calculate the effective rate of  
19 those agreements. The court has said that that is  
20 permissible testimony. And we didn't do it as artfully  
21 as we should, and I apologize for that.

22 But the point is the defendants vehemently  
23 argue that it should be -- you should only look at the  
24 gross amount of the payment, not at the effective rate.  
25 That's their fundamental point. The disagreement on the

1 parties is Intel's appropriate damages is limited to  
2 \$350,000 because that was the lump-sum payment or is it  
3 proper for the jury to award damages based on the  
4 effective rate. The court has already --

5 THE COURT: Computed rate, yeah. I've --

6 MR. ALBRITTON: You've already --

7 THE COURT: What I'm telling you, though, is  
8 I'm not sure how some of this testimony relates to that;  
9 and it sounds to me as though there is an implication  
10 here by Mr. Zilka and Mr. Houh that they've examined the  
11 patents, that they think they are infringed. And I just  
12 suggest that you be careful to avoid that implication  
13 because if you go much further I'm going to be concerned  
14 about it.

15 MR. ALBRITTON: Certainly that's fair. And I  
16 apologize. I know it's late in the day. But I have a  
17 very specific concern with respect to Mr. Zilka that  
18 is -- I hear you loud and clear on what you've just said.  
19 My concern, though, is, your Honor, the defendants say --  
20 and the court has already rejected this whole point about  
21 lump sum versus effective rate. The testimony is clear  
22 and admissible, I would respectfully suggest, that  
23 Stragent in negotiating those licenses considered the  
24 extent of use, which of course is what *Lucent* tells us is  
25 appropriate. And, so, we're not trying to say -- and

1 we'll be much more careful. We're not trying to say that  
2 we believe Stragent -- you know, they're not offering  
3 opinions that Intel infringes. The purpose of that  
4 testimony is merely to say that when we negotiated a  
5 license with Lattice and Freescale, that we actually  
6 considered that -- the revenue information in reaching  
7 that decision. That directly contradicts -- and the  
8 experts talk about this. And, so, that's all we're  
9 trying to do, your Honor.

10 I'll be very careful as to the issue that you  
11 raised, but we ask that tomorrow Mr. Zilka be able to  
12 testify merely that in negotiating those licenses with  
13 Freescale and Lattice he considered their extent of use  
14 in terms of what was the revenue associated with past --

15 THE COURT: I've already ruled I'm not going  
16 to let him testify to what he thought that's beyond  
17 what's set forth in the agreement. But, you know, within  
18 those confines he can testify about this.

19 You understand my concern about not having  
20 these witnesses testify about infringement, that "we  
21 thought these were valuable patents because we knew they  
22 were infringed," so on and so forth. Okay?

23 MR. ALBRITTON: Yes, sir.

24 THE COURT: And, then, is there anything else  
25 that we need to address this afternoon?

1 MR. CAMPBELL: I'm not aware of anything, your  
2 Honor.

3 THE COURT: Mr. Albritton, how about you?

4 MR. ALBRITTON: No, sir.

5 THE COURT: Okay. Thank you all very much.  
6 You've been cooperative. You've been very helpful to the  
7 court. We'll see you at 9:00 in the morning; and if  
8 there is something that you need to bring up before we  
9 bring the jury in in the morning, you know, I'll be here  
10 a few minutes before we start so you can raise that.  
11 Okay? So, for the moment, we're adjourned. Thank you.

12 (Proceedings adjourned, 6:20 p.m.)

13 COURT REPORTER'S CERTIFICATION

14 I HEREBY CERTIFY THAT ON THIS DATE, MARCH 10,  
15 2014, THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE  
16 RECORD OF PROCEEDINGS.

17

18

19 /s/  
CHRISTINA L. BICKHAM, RMR-CRR

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/s/  
TONYA B. JACKSON, RPR-CRR

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